

# APPROPRIATIONS

## CHAPTER 1

### HOUSE BILL NO. 1001

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

AN ACT providing an appropriation for defraying the expenses of the legislative branch of state government; to provide for applications and transfers; to amend and reenact sections 54-03-10, 54-03-20, and 54-35-10 of the North Dakota Century Code, relating to legislative compensation; 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, not otherwise appropriated, to the legislative branch of state government for the purpose of defraying the expenses of that branch, for the fiscal period beginning with the effective date of this Act and ending June 30, 2013, as follows:

##### Subdivision 1.

#### SIXTY-SECOND AND SIXTY-THIRD LEGISLATIVE ASSEMBLIES AND BIENNIUM

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$7,933,506	\$784,985	\$8,718,491
Operating expenses	2,850,061	1,167,255	4,017,316
Capital assets	0	1,300,000	1,300,000
National conference of state legislatures	227,660	4,450	232,110
Total general fund	\$11,011,227	\$3,256,690	\$14,267,917

##### Subdivision 2.

#### LEGISLATIVE MANAGEMENT AND LEGISLATIVE COUNCIL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$6,876,369	\$697,962	\$7,574,331
Operating expenses	3,442,134	473,193	3,915,327
Capital assets	21,000	20,500	41,500
Total all funds	\$10,339,503	\$1,191,655	\$11,531,158
Less estimated income	70,000	0	70,000
Total general fund	\$10,269,503	\$1,191,655	\$11,461,158
Full-time equivalent positions	34.00	0	34.00

## Subdivision 3.

## BILL TOTAL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$21,280,730	\$4,448,345	\$25,729,075
Grand total special funds	<u>70,000</u>	<u>0</u>	<u>70,000</u>
Grand total all funds	\$21,350,730	\$4,448,345	\$25,799,075

**SECTION 2. LEGISLATIVE ASSEMBLY ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-THIRD LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-first legislative assembly for the 2009-11 biennium and the 2011-13 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>2009-11</u>	<u>2011-13</u>
Legislative applications replacement system	\$3,910,827	\$0
Computer equipment replacement	92,500	510,750
Legislative wing equipment and improvements	1,000,000	1,300,000
Redistricting special session	0	272,018
Information technology projects	<u>0</u>	<u>159,938</u>
Total general fund	\$5,003,327	\$2,242,706

The 2011-13 one-time funding amounts are not a part of the entity's base budget for the 2013-15 biennium. The legislative assembly shall report to the appropriations committees of the sixty-third legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 3. LEGISLATIVE MANAGEMENT AND LEGISLATIVE COUNCIL ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-THIRD LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-first legislative assembly for the 2009-11 biennium and the 2011-13 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>2009-11</u>	<u>2011-13</u>
Computer equipment replacement	\$0	\$76,000
Information technology projects	0	483,807
Office equipment replacement	20,000	25,000
State employee compensation study	100,000	0
Office improvements	<u>50,000</u>	<u>50,000</u>
Total general fund	\$170,000	\$634,807

The 2011-13 one-time funding amounts are not a part of the entity's base budget for the 2013-15 biennium. The legislative management and legislative council shall report to the appropriations committees of the sixty-third legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 4. TRANSFERS.** Notwithstanding section 54-16-05, the director of the office of management and budget and the state treasurer shall make transfers of funds between line items of appropriations for the legislative management and legislative council as may be requested by the chairman of the legislative management or the chairman's designee upon the finding by the chairman or designee 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 and legislative council's functions and duties. The director of the office of management and budget and the state treasurer shall similarly make transfers of funds between the line items for the sixty-second and sixty-third legislative assemblies, upon request by the chairman of the legislative management or the chairman's designee upon the finding by the chairman or designee that the transfers are required for the legislative assembly to carry on its functions and duties.

**SECTION 5. APPLICATION AND TRANSFER AUTHORITY.** Sections 54-16-04 and 54-44.1-11 do not apply to chapter 29 of the 2009 Session Laws. The director of the office of management and budget and the state treasurer shall make transfers of funds 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 chairman's designee.

**SECTION 6. COMMITTEE ROOM RENOVATIONS AND IMPROVEMENTS FUNDING - EXPENDITURE DETERMINATION.** Any expenditure of funds relating to the sum of \$200,000 of the \$500,000 provided for committee room renovations and improvements in subdivision 1 of section 1 of this Act must be approved by a majority of the senate members of the interim legislative procedure and arrangements committee. Any expenditures relating to a separate sum of \$200,000 of the \$500,000 for committee room renovations and improvements must be approved by a majority of the house of representatives members of the interim legislative procedure and arrangements committee, and any expenditures relating to the remaining \$100,000 must be approved by a majority of all members of the interim legislative procedure and arrangements committee, for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 7. AMENDMENT.** Section 54-03-10 of the North Dakota Century Code is amended and reenacted as follows:

**54-03-10. Compensation of speaker, majority and minority leaders, assistant majority and minority leaders, committee chairmen, and employees.**

The speaker of the house, the house majority leader, the senate majority leader, the house minority leader, and the senate minority leader shall each receive as compensation, in addition to any other compensation or expense reimbursement provided by law, the sum of ~~ten~~<sup>fifteen</sup> dollars per day for each calendar day during any regular, special, or organizational session. Chairmen of the substantive standing committees, the house assistant majority leader, the senate assistant majority leader, the house assistant minority leader, and the senate assistant minority leader shall receive additional compensation of ~~five~~<sup>ten</sup> dollars for each calendar day during any regular, special, or organizational session. The additional compensation provided by this section must be paid in the manner provided in section 54-03-20. The legislative assembly, by concurrent resolution, shall fix the compensation of the other officers and employees elected or appointed.

<sup>1</sup> **SECTION 8. AMENDMENT.** Section 54-03-20 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>1</sup> Section 54-03-20 was also amended by section 26 of Senate Bill No. 2015, chapter 41.

**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 ~~forty-eight~~fifty-two 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 fifty-five 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 following each month during a regular or special session.
  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 hundred ~~fifteen~~twenty-seven 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 ~~two~~three hundred ~~ninety-eight~~seven 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 54-03-20 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 ~~fifty-two~~fifty-seven 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 fifty-five 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 following each month during a regular or special session.

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 hundred ~~twenty-seven~~forty 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 ~~two hundred ninety-eight~~three hundred sixteen 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 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 ~~forty-eight~~fifty-two 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. 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 ~~fifty-two~~fifty-seven 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 12. EFFECTIVE DATE.** Sections 7, 8, and 10 of this Act become effective on July 1, 2011, and sections 9 and 11 of this Act become effective on July 1, 2012.

**SECTION 13. EMERGENCY.** This Act is declared to be an emergency measure.

Approved May 5, 2011  
Filed May 5, 2011



## CHAPTER 2

### HOUSE BILL NO. 1002

(Appropriations Committee)  
(At the request of the Supreme Court)

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

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

**SECTION 1. 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 that agency, for the biennium beginning July 1, 2011, and ending June 30, 2013, as follows:

##### Subdivision 1.

#### SUPREME COURT

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$8,189,996	\$926,655	\$9,116,651
Operating expenses	2,197,376	117,742	2,315,118
Capital assets	0	25,000	25,000
Judges retirement	127,021	11,084	138,105
Total general fund	\$10,514,393	\$1,080,481	\$11,594,874

##### Subdivision 2.

#### DISTRICT COURTS

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$48,980,255	\$5,235,889	\$54,216,144
Operating expenses	14,633,423	2,225,099	16,858,522
Capital assets	0	676,480	676,480
Judges retirement	533,705	(54,708)	478,997
UND central legal research	80,000	0	80,000
Alternative dispute resolution	20,000	(20,000)	0
Mediation	792,036	77,628	869,664
Total all funds	\$65,039,419	\$8,140,388	\$73,179,807
Less estimated income	1,770,461	86,314	1,856,775
Total general fund	\$63,268,958	\$8,054,074	\$71,323,032

## 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	\$813,629	\$76,326	\$889,955
Total all funds	\$813,629	\$76,326	\$889,955
Less estimated income	314,346	11,153	325,499
Total general fund	\$499,283	\$65,173	\$564,456

## Subdivision 4.

## BILL TOTAL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$74,282,634	\$9,199,728	\$83,482,362
Grand total special funds	2,084,807	97,467	2,182,274
Grand total all funds	\$76,367,441	\$9,297,195	\$85,664,636
Full-time equivalent positions	342.00	2.00	344.00

**SECTION 2. APPROPRIATION.** There are appropriated any funds received by the supreme court, district courts, and judicial conduct commission and disciplinary board, not otherwise appropriated, pursuant to federal acts and private gifts, grants, and donations for the purpose as designated in the federal acts or private gifts, grants, and donations for the period beginning July 1, 2011, and ending June 30, 2013.

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

**SECTION 4. 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 ~~twenty-four~~thirty-four thousand ~~twenty-seven~~one hundred ~~thirty-five~~thirty-eight dollars through June 30, ~~2010~~2012, and one hundred ~~thirty~~thirty-eight thousand ~~two~~one hundred ~~twenty-eight~~thirty-nine dollars thereafter. The chief justice of the supreme court is entitled to receive an additional three thousand ~~five~~eight hundred ~~sixty-two~~sixty-two dollars per annum through June 30, ~~2010~~2012, and three thousand ~~seven~~nine hundred ~~forty-six~~eight dollars per annum thereafter.

**SECTION 5. 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 ~~thirteen~~twenty-two thousand ~~six~~nine hundred ~~forty-eight~~ten dollars through June 30, ~~2010~~2012, and one hundred ~~nineteen~~twenty-six thousand ~~three~~five hundred ~~thirty~~ninety-seven 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 three thousand ~~two~~five hundred ~~eighty-two~~fifty dollars per annum through June 30, ~~2010~~2012, and three thousand ~~four~~six hundred ~~forty-seven~~fifty-seven dollars thereafter.

**SECTION 6. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-THIRD LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-first legislative assembly for the 2009-11 biennium and the 2011-13 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2009-11</u>	<u>2011-13</u>
Unified case management system replacement project	\$7,258,129	\$0
Management reserve fund	600,000	0
Parenting coordinator training	52,040	0
Studies on work assessment and racial and ethical bias in the courts	0	200,000
Office equipment and furniture	288,124	185,000
Information technology equipment	<u>109,088</u>	<u>516,480</u>
Total general fund	\$8,307,381	\$901,480

The 2011-13 one-time funding amounts are not part of the entity's base budget for the 2013-15 biennium. The supreme court shall report to the appropriations committees of the sixty-third legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2011, and ending June 30, 2013.

Approved May 5, 2011  
 Filed May 5, 2011

## CHAPTER 3

### HOUSE BILL NO. 1003

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

AN ACT to provide an appropriation for defraying the expenses of the North Dakota university system; to provide borrowing authority; to provide an exemption; to provide for transfer of funds; to authorize the state board of higher education to issue and sell bonds for capital projects; to amend and reenact sections 15-10-08 and 15-70-04, subsection 3 of section 43-12.2-03, and subsection 3 of section 43-17.2-03 of the North Dakota Century Code, relating to state board of higher education member compensation, eligibility for the medical personnel loan repayment program, eligibility for the physician loan repayment program, and grants for nonbeneficiary students enrolled in tribally controlled community colleges; to provide legislative intent; to provide for reports; to provide for legislative management studies; and to declare an emergency.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the North Dakota university system and to the various entities and institutions under the supervision of the state board of higher education for the purpose of defraying the expenses of the North Dakota university system office and to the various entities, for the biennium beginning July 1, 2011, and ending June 30, 2013, as follows:

#### Subdivision 1.

#### NORTH DAKOTA UNIVERSITY SYSTEM OFFICE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Capital assets	\$12,014,048	\$190,721	\$12,204,769
Competitive research program	7,050,000	0	7,050,000
System governance	7,185,612	(308,340)	6,877,272
Title II	695,600	0	695,600
System information technology services	30,230,038	5,776,629	36,006,667
Professional liability insurance	1,100,000	(300,000)	800,000
Student financial assistance grants	19,374,022	0	19,374,022
Professional student exchange program	3,337,100	(15,662)	3,321,438
Academic and technical education scholarships	3,000,000	(3,000,000)	0
Two-year campus marketing	800,000	0	800,000
Scholars program	2,113,584	0	2,113,584
Native American scholarships	381,292	192,975	574,267

Tribally controlled community college grants	700,000	300,000	1,000,000
Security and emergency preparedness	750,000	(750,000)	0
Education incentive programs	3,176,344	0	3,176,344
Science, technology, engineering, and mathematics teacher education enhancement	1,500,000	(1,500,000)	0
Equity and student affordability	0	15,240,565	15,240,565
Grants	100,000	(100,000)	0
Total all funds	\$93,507,640	\$15,726,888	\$109,234,528
Less estimated income	<u>4,748,958</u>	<u>(1,994,240)</u>	<u>2,754,718</u>
Total general fund	\$88,758,682	\$17,721,128	\$106,479,810
Full-time equivalent positions	23.30	0.00	23.30

Subdivision 2.

### BISMARCK STATE COLLEGE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$24,204,005	\$2,256,082	\$26,460,087
Capital assets	<u>243,481</u>	<u>13,767,125</u>	<u>14,010,606</u>
Total all funds	\$24,447,486	\$16,023,207	\$40,470,693
Less estimated income	<u>0</u>	<u>8,535,000</u>	<u>8,535,000</u>
Total general fund	\$24,447,486	\$7,488,207	\$31,935,693
Full-time equivalent positions	111.51	0.00	111.51

Subdivision 3.

### LAKE REGION STATE COLLEGE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$7,956,210	\$663,033	\$8,619,243
Capital assets	<u>43,662</u>	<u>977,705</u>	<u>1,021,367</u>
Total all funds	\$7,999,872	\$1,640,738	\$9,640,610
Less estimated income	<u>0</u>	<u>0</u>	<u>0</u>
Total general fund	\$7,999,872	\$1,640,738	\$9,640,610
Full-time equivalent positions	37.50	0.00	37.50

Subdivision 4.

### WILLISTON STATE COLLEGE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$7,696,999	\$803,898	\$8,500,897
Capital assets	<u>86,475</u>	<u>5,156,326</u>	<u>5,242,801</u>
Total all funds	\$7,783,474	\$5,960,224	\$13,743,698
Less estimated income	<u>0</u>	<u>2,225,000</u>	<u>2,225,000</u>
Total general fund	\$7,783,474	\$3,735,224	\$11,518,698
Full-time equivalent positions	43.42	0.00	43.42

## Subdivision 5.

## UNIVERSITY OF NORTH DAKOTA

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$125,036,783	\$11,557,009	\$136,593,792
Capital assets	<u>2,300,545</u>	<u>45,158,167</u>	<u>47,458,712</u>
Total all funds	\$127,337,328	\$56,715,176	\$184,052,504
Less estimated income	<u>0</u>	<u>30,450,000</u>	<u>30,450,000</u>
Total general fund	\$127,337,328	\$26,265,176	\$153,602,504
Full-time equivalent positions	651.91	0.00	651.91

## Subdivision 6.

## NORTH DAKOTA STATE UNIVERSITY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$108,367,622	\$10,567,076	\$118,934,698
Capital assets	<u>1,692,225</u>	<u>37,412,702</u>	<u>39,104,927</u>
Total all funds	\$110,059,847	\$47,979,778	\$158,039,625
Less estimated income	<u>0</u>	<u>36,100,000</u>	<u>36,100,000</u>
Total general fund	\$110,059,847	\$11,879,778	\$121,939,625
Full-time equivalent positions	584.88	0.00	584.88

## Subdivision 7.

## NORTH DAKOTA STATE COLLEGE OF SCIENCE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$31,607,155	\$2,006,991	\$33,614,146
Capital assets	<u>753,332</u>	<u>21,317,713</u>	<u>22,071,045</u>
Total all funds	\$32,360,487	\$23,324,704	\$55,685,191
Less estimated income	<u>0</u>	<u>10,700,000</u>	<u>10,700,000</u>
Total general fund	\$32,360,487	\$12,624,704	\$44,985,191
Full-time equivalent positions	164.87	0.00	164.87

## Subdivision 8.

## DICKINSON STATE UNIVERSITY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$20,123,737	\$2,682,639	\$22,806,376
Capital assets	<u>383,690</u>	<u>25,388</u>	<u>409,078</u>
Total all funds	\$20,507,427	\$2,708,027	\$23,215,454
Less estimated income	<u>0</u>	<u>0</u>	<u>0</u>
Total general fund	\$20,507,427	\$2,708,027	\$23,215,454
Full-time equivalent positions	92.96	0.00	92.96

## Subdivision 9.

## MAYVILLE STATE UNIVERSITY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$11,629,616	\$1,010,207	\$12,639,823
Capital assets	<u>208,991</u>	<u>234,514</u>	<u>443,505</u>
Total all funds	\$11,838,607	\$1,244,721	\$13,083,328
Less estimated income	<u>0</u>	<u>0</u>	<u>0</u>
Total general fund	\$11,838,607	\$1,244,721	\$13,083,328
Full-time equivalent positions	58.72	0.00	58.72

## Subdivision 10.

## MINOT STATE UNIVERSITY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$34,623,707	\$2,647,646	\$37,271,353
Capital assets	<u>596,870</u>	<u>21,187,305</u>	<u>21,784,175</u>
Total all funds	\$35,220,577	\$23,834,951	\$59,055,528
Less estimated income	<u>0</u>	<u>16,034,555</u>	<u>16,034,555</u>
Total general fund	\$35,220,577	\$7,800,396	\$43,020,973
Full-time equivalent positions	187.83	0.00	187.83

## Subdivision 11.

## VALLEY CITY STATE UNIVERSITY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$16,368,001	\$1,037,737	\$17,405,738
Capital assets	<u>258,416</u>	<u>11,513,319</u>	<u>11,771,735</u>
Total all funds	\$16,626,417	\$12,551,056	\$29,177,473
Less estimated income	<u>0</u>	<u>1,015,000</u>	<u>1,015,000</u>
Total general fund	\$16,626,417	\$11,536,056	\$28,162,473
Full-time equivalent positions	90.37	0.00	90.37

## Subdivision 12.

## DAKOTA COLLEGE AT BOTTINEAU

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$5,862,372	\$378,063	\$6,240,435
Capital assets	<u>109,725</u>	<u>705,782</u>	<u>815,507</u>
Total all funds	\$5,972,097	\$1,083,845	\$7,055,942
Less estimated income	<u>0</u>	<u>0</u>	<u>0</u>
Total general fund	\$5,972,097	\$1,083,845	\$7,055,942
Full-time equivalent positions	34.81	0.00	34.81

## 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	\$40,890,401	\$5,892,620	\$46,783,021
Total all funds	\$40,890,401	\$5,892,620	\$46,783,021
Less estimated income	0	0	0
Total general fund	\$40,890,401	\$5,892,620	\$46,783,021
Full-time equivalent positions	137.43	0.00	137.43

## Subdivision 14.

## NORTH DAKOTA FOREST SERVICE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$4,471,040	\$641,127	\$5,112,167
Capital assets	36,638	67,153	103,791
Total all funds	\$4,507,678	\$708,280	\$5,215,958
Less estimated income	997,486	6,000	1,003,486
Total general fund	\$3,510,192	\$702,280	\$4,212,472
Full-time equivalent positions	26.00	0.00	26.00

## Subdivision 15.

## BILL TOTAL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total all funds	\$539,059,338	\$215,394,215	\$754,453,553
Grand total special funds	5,746,444	103,071,315	108,817,759
Grand total general fund	\$533,312,894	\$112,322,900	\$645,635,794

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-THIRD LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-first legislative assembly for the 2009-11 biennium and the 2011-13 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2009-11</u>	<u>2011-13</u>
Federal fiscal stimulus	\$19,309,920	\$0
Dickinson state university operating funds	350,000	900,000
Mayville state university drainage study	0	55,000
UND school of medicine space utilization study	0	100,000
Dickinson state university Theodore Roosevelt center	750,000	0
Electronic medical records system UND medical school	225,000	0
Deferred maintenance - General fund	20,000,000	0
Capital projects - General fund	39,008,248	47,136,000
Capital projects - Other funds	166,958,000	105,065,555
Capital projects - Permanent oil tax trust fund	10,400,000	0
Special assessments payments	0	819,357



Emerald ash borer program	0	<u>250,000</u>
Total all funds	\$257,001,168	\$154,325,912
Total other funds	<u>197,017,920</u>	<u>105,065,555</u>
Total general fund	\$59,983,248	\$49,260,357

The 2011-13 one-time funding amounts are not a part of the entity's base budget for the 2013-15 biennium. The North Dakota university system shall report to the appropriations committees of the sixty-third legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2013, and ending June 30, 2015.

**SECTION 3. TRANSFER - PERMANENT OIL TAX TRUST FUND - 2009-11 BIENNIUM.** The office of management and budget shall transfer any unexpended funds appropriated from the permanent oil tax trust fund in chapter 31 of the 2009 Session Laws to the appropriate higher education institution's special fund at the end of the biennium beginning July 1, 2009, and ending June 30, 2011. For the purposes of this section, "end of the biennium" means thirty days after the close of the biennial period but prior to the cancellation of unexpended appropriations under section 54-44.1-11.

**SECTION 4. BORROWING AUTHORITY - WILLISTON STATE COLLEGE - WORKFORCE TRAINING BUILDING PROJECT.** Williston state college may borrow the sum of \$1,725,000, or so much of the sum as may be necessary, from the Bank of North Dakota for the workforce training building project for the period beginning with the effective date of this Act and ending June 30, 2013.

**SECTION 5. CAPITAL ASSETS.** The sum of \$12,204,769, or so much of the sum as may be necessary, included in the capital assets line item in subdivision 1 of section 1 of this Act, must be used by the state board of higher education to satisfy outstanding bond obligations.

**SECTION 6. EQUITY AND STUDENT AFFORDABILITY FUNDING POOL TRANSFERS.** The equity and student affordability line item in subdivision 1 of section 1 of this Act includes the sum of \$15,240,565 which must be transferred by the state board of higher education to institutions under its control based on existing formulas for equity and student affordability distributions.

**SECTION 7. NORTH DAKOTA UNIVERSITY SYSTEM AND UNIVERSITY OF NORTH DAKOTA JOINT INFORMATION TECHNOLOGY BUILDING PROJECT - BUDGET SECTION REPORT.** The capital assets line item in subdivision 5 of section 1 of this Act includes the sum of \$20,500,000 for the North Dakota university system and university of North Dakota joint information technology building project. The state board of higher education may spend additional funds on the project of up to \$5,000,000 that are made available from the university of North Dakota, North Dakota state university, and North Dakota university system 2011-13 biennium information technology services funding resulting from one-time savings or efficiencies. The North Dakota university system shall provide a report to the budget section of the legislative management regarding any funds expended pursuant to this section.

**SECTION 8. NORTH DAKOTA STATE UNIVERSITY - MINARD HALL - BUDGET SECTION REPORT.** North Dakota state university may use unspent funding from the \$5,000,000 appropriation received during the biennium beginning July 1, 2007, and ending June 30, 2009, and unspent funding from the \$13,000,000 appropriation received during the biennium beginning July 1, 2009, and ending June 30, 2011, for the Minard hall project, for the biennium beginning July 1, 2011, and ending June 30, 2013. North Dakota state university shall report to the budget

section regarding the status of the Minard hall project and may request increased spending authorization from the budget section for the project.

**SECTION 9. SYSTEM INFORMATION TECHNOLOGY SERVICES.** The sum of \$36,006,667, or so much of the sum as may be necessary, included in the system information technology services line item in subdivision 1 of section 1 of this Act, must be used for the benefit of the institutions and entities under the control of the state board of higher education, as determined by the board. Funding allocations are to be made based on the North Dakota university system information technology plan and technology priorities. Funds allocated pursuant to this section must be used to support the system information technology services, including the higher education computer network, the interactive video network, the on-line Dakota information network, connectND, and other related technology initiatives as determined by the board.

**SECTION 10. STUDENT LOAN TRUST FUND.** Subdivision 1 of section 1 of this Act includes the sum of \$1,004,744, or so much of the sum as may be necessary, from the student loan trust fund of which \$465,307 is for the professional student exchange program and \$539,437 connectND campus solution positions, for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 11. 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, received by the institutions and entities under the control of the state board of higher education are appropriated to those institutions and entities, for the biennium beginning July 1, 2011, and ending June 30, 2013. All additional funds received under the North Dakota-Minnesota reciprocity agreement during the biennium beginning July 1, 2011, and ending June 30, 2013, are appropriated to the state board of higher education for reimbursement to institutions under the control of the board.

**SECTION 12. TRANSFER AUTHORITY.** If, during the biennium beginning July 1, 2011, and ending June 30, 2013, the state board of higher education determines that funds allocated to operations in section 1 of this Act are needed for capital assets or extraordinary repairs, the board may transfer funds from operations to capital assets. The board shall report any transfer of funds under this section to the office of management and budget.

**SECTION 13. FULL-TIME EQUIVALENT POSITION ADJUSTMENTS.** 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. The university system shall report any adjustments to the office of management and budget before the submission of the 2013-15 biennium budget request.

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

**SECTION 15. BOND ISSUANCE AUTHORIZATION - PURPOSES - APPROPRIATION.** The state board of higher education, in accordance with chapter 15-55, may arrange for the funding of projects authorized in this section, declared to

be in the public interest, through the issuance of self-liquidating, tax-exempt evidences of indebtedness under chapter 15-55, beginning with the effective date of this Act and ending June 30, 2013. Evidences of indebtedness issued pursuant to this section are not a general obligation of the state of North Dakota. Any unexpended balance resulting from the proceeds of the evidences of indebtedness must be placed in a sinking fund to be used for the retirement of indebtedness. The evidences of indebtedness may be issued and the proceeds are appropriated, for the biennium beginning July 1, 2011, and ending June 30, 2013, for the purpose of financing the following capital projects:

Bismarck state college student union renovation and addition	\$7,000,000
Williston state college workforce training center	1,725,000
University of North Dakota - Wilkerson hall renovation and addition	14,000,000
University of North Dakota - University town home apartments	5,000,000
North Dakota state college of science - Forkner hall renovation	5,000,000
North Dakota state college of science - Schulz hall renovation	4,000,000
Minot state university - Resident apartments	<u>3,500,000</u>
Total special funds	\$40,225,000

**SECTION 16. AMENDMENT.** Section 15-10-08 of the North Dakota Century Code is amended and reenacted as follows:

**15-10-08. Compensation of board members - Expenses - Legislative appropriations.**

Each member of the state board of higher education, except the student member, is entitled to receive as compensation one hundred forty-eight dollars per day for each calendar day actually spent devoted to the duties of office, and necessary expenses in the same manner and amounts as other state officials for attending meetings and performing other functions of office. The legislative assembly shall provide adequate funds to carry out the functions and duties of the board.

**SECTION 17. AMENDMENT.** Section 15-70-04 of the North Dakota Century Code is amended and reenacted as follows:

**15-70-04. Submission of grant application - Distribution of grants.**

1. In order to qualify for a grant under this chapter, an institutiona tribally controlled community college shall submit an application at the time and in the manner required by the state board of higher education. The application must document:
  - a. Include the name and address of each student who qualifies for financial assistance under this chapter; and
  - b. Document the enrollment status of each student on whose account who qualifies for financial assistance under this chapter is sought.
2. If an application is approved, the state board of higher education shall distribute to each the tribally controlled community college, during each year of the biennium, five thousand three hundred four dollars per full-time equivalent nonbeneficiary student an amount equivalent to the most recent per student payment provided in accordance with the Tribally Controlled Colleges and Universities Assistance Act of 1978 [25 U.S.C. 20] for each nonbeneficiary student who is a resident of the state. If the amount appropriated is insufficient to meet the requirements of this section, the board shall distribute a prorated

~~amount per full-time equivalent nonbeneficiary student~~ prorate the amount to be distributed.

3. If after meeting the requirements of this section any amount remains available for distribution at the conclusion of each year of the biennium, the state board of higher education shall provide prorated distribution based on criteria set forth in this section.
4. At the time and in the manner determined by the state board of higher education, each tribally controlled community college receiving assistance under this section shall file a report indicating:
  - a. The graduation rate of nonbeneficiary students; and
  - b. The ratio between the amount of funding received by the tribally controlled community college under this section and the college's annual budget.

**SECTION 18. AMENDMENT.** Subsection 3 of section 43-12.2-03 of the North Dakota Century Code is amended and reenacted as follows:

3. A nurse practitioner, physician assistant, or certified nurse midwife who receives loan repayment under this chapter:
  - a. Must be a graduate of an accredited program, located in the United States or Canada, for the preparation of nurse practitioners, physician assistants, or certified nurse midwives;
  - b. ~~Must be enrolled in or have graduated from an accredited training program for nurse practitioners, physician assistants, or certified nurse midwives prior to or within one year after submitting an application to participate in the loan repayment program and may not have practiced full time as a nurse practitioner, physician assistant, or certified nurse midwife in this state for more than one year before the date of the application;~~
  - e. Must be licensed or registered to practice as a nurse practitioner, physician assistant, or certified nurse midwife in this state;
  - ~~e.c.~~ Shall submit an application to participate in the loan repayment program; and
  - ~~e.d.~~ Must have entered into an agreement with a selected community to provide full-time services for a minimum of two years at the selected community if the applicant receives a loan repayment program contract.

**SECTION 19. AMENDMENT.** Subsection 3 of section 43-17.2-03 of the North Dakota Century Code is amended and reenacted as follows:

3. A physician who receives loan repayment under this chapter:
  - a. Must be a graduate of an accredited four-year allopathic or osteopathic medical school located in the United States, its possessions, territories, or Canada and approved by the state board of medical examiners or by an accrediting body approved by the board;
  - b. ~~Must not have practiced full-time medicine in this state for more than one year before the date of the application;~~

- e- Must have a full and unrestricted license to practice medicine in this state;
- ~~e-c.~~ Shall submit an application to participate in the loan repayment program; and
- e-d. Must have entered into an agreement with a selected community to provide full-time medical services for a minimum of two years at the selected community if the applicant receives a loan repayment program contract.

**SECTION 20. LEGISLATIVE INTENT - NORTH DAKOTA UNIVERSITY SYSTEM BUDGET REQUEST.** It is the intent of the sixty-second legislative assembly that the state board of higher education develop a budget request for the North Dakota university system for the 2013-15 biennium that does not include a funding component for student affordability to limit student tuition increases or a funding component for equity distributions to institutions based on a peer institution comparison. The budget request may be based on a funding method that incorporates a tiered system of funding distributions based on institution type or other funding method that addresses the needs of the North Dakota university system.

**SECTION 21. LEGISLATIVE INTENT - ENROLLMENT REPORTING.** It is the intent of the sixty-second legislative assembly that North Dakota university system enrollment reports detailing fall semester enrollment information only include data for full-time students that are physically present on campus.

**SECTION 22. LEGISLATIVE MANAGEMENT STUDY - PROGRAM TUITION RATES - WORKFORCE NEEDS.** During the 2011-12 interim, the legislative management shall consider studying programs offered by North Dakota university system institutions that address the workforce needs of the state, including a review of the use of graduated tuition rates to increase enrollment in programs that address workforce needs. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

**SECTION 23. LEGISLATIVE MANAGEMENT STUDY - UNIVERSITY OF NORTH DAKOTA SCHOOL OF MEDICINE AND HEALTH SCIENCES.** During the 2011-12 interim, the legislative management chairman shall consider appointing a separate committee to study the ability of the university of North Dakota school of medicine and health sciences to meet the health care needs of the state. The study, if conducted, must include a review of the health care needs of the state, options to address the health care needs of the state, and the feasibility and desirability of expanding the school of medicine and health sciences to meet the health care needs of the state. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

**SECTION 24. EMERGENCY.** The capital assets and education incentive line items contained in section 1 of this Act and sections 4 and 15 of this Act are declared to be an emergency measure.

Approved May 4, 2011  
Filed May 5, 2011

## CHAPTER 4

### HOUSE BILL NO. 1004

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

AN ACT to provide an appropriation for defraying the expenses of the state department of health; to provide a contingent appropriation; to provide legislative intent; to provide for reports; to provide for a legislative management study; to provide for a performance audit; 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, 2011, and ending June 30, 2013, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$44,861,868	\$4,283,655	\$49,145,523
Operating expenses	44,635,794	3,957,372	48,593,166
Capital assets	1,813,268	184,805	1,998,073
Grants	62,160,510	(6,632,472)	55,528,038
Tobacco prevention	9,079,685	(2,917,289)	6,162,396
WIC food payments	25,063,375	(905,266)	24,158,109
Federal stimulus funds	0	3,492,228	3,492,228
Total all funds	\$187,614,500	\$1,463,033	\$189,077,533
Less estimated income	<u>164,609,206</u>	<u>(4,445,453)</u>	<u>160,163,753</u>
Total general fund	\$23,005,294	\$5,908,486	\$28,913,780
Full-time equivalent positions	343.50	(1.00)	342.50

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-THIRD LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-first legislative assembly for the 2009-11 biennium and the 2011-13 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2009-11</u>	<u>2011-13</u>
Grant for mobile dental care service	\$196,000	\$0
Contingent transfer - Community health trust fund	2,405,371	0
Regional public health network pilot project	275,000	0
Immunization services	1,200,000	0
STEMI response program grant	0	600,000
Federal fiscal stimulus	13,247,325	3,492,228
Total all funds	\$17,323,696	\$4,092,228
Less estimated income	<u>13,247,325</u>	<u>3,492,228</u>
Total general fund	\$4,076,371	\$600,000

The 2011-13 one-time funding amounts are not a part of the entity's base budget for the 2013-15 biennium. The state department of health shall report to the appropriations committees of the sixty-third legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 3. ENVIRONMENT AND RANGELAND PROTECTION FUND.** The estimated income line item included in section 1 of this Act includes \$272,310, or so much of the sum as may be necessary, to be made available to the state department of health from the environment and rangeland protection fund, for the biennium beginning July 1, 2011, and ending June 30, 2013. This amount includes \$50,000 for a grant to the North Dakota stockmen's association environmental services program.

**SECTION 4. SAFE HAVENS SUPERVISED VISITATION AND EXCHANGE PROGRAM - DISTRIBUTION.** The sum of \$425,000 included in the grants line item in section 1 of this Act is provided to continue the safe havens supervised visitation and exchange program for centers meeting eligibility standards in effect during the 2009-11 biennium.

**SECTION 5. CONTINGENT APPROPRIATION AND BANK OF NORTH DAKOTA LINE OF CREDIT - LITIGATION AND ADMINISTRATIVE PROCEEDINGS COSTS - REPORT TO BUDGET SECTION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$500,000, or so much of the sum as may be necessary, to the state department of health for the purpose of defraying expenses associated with possible litigation and other administrative proceedings involving the United States environmental protection agency for the period beginning with the effective date of this Act and ending June 30, 2013. In addition, the state department of health, contingent on litigation and administrative proceedings, may borrow the sum of \$500,000, or so much of the sum as may be necessary, from the Bank of North Dakota, the proceeds of which is appropriated to the state department of health for the purpose of defraying the expenses associated with possible litigation and other administrative proceedings involving the United States environmental protection agency for the period beginning with the effective date of this Act and ending June 30, 2013. The department may spend the general fund moneys and access the line of credit only upon approval by the attorney general. The department must report quarterly to the budget section during the 2011-12 interim regarding the status of any litigation and other administrative proceedings.

**SECTION 6. INTENT - INDIRECT COST RECOVERIES.** Notwithstanding section 54-44.1-15, the state department of health may deposit indirect cost recoveries in its operating account.

**SECTION 7. LEGISLATIVE INTENT - SUICIDE PREVENTION PROGRAM.** It is the intent of the legislative assembly that the state department of health work in conjunction with the Indian affairs commission to develop, implement, and coordinate a suicide prevention program, including outreach, education, and administration of grants for suicide prevention activities for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 8. LEGISLATIVE MANAGEMENT STUDY - REGIONAL PUBLIC HEALTH NETWORK PILOT PROJECT.** During the 2011-12 interim, the legislative management shall consider studying the regional public health network pilot project conducted during the 2009-11 biennium, including services provided, effects of the project on participating local public health units, efficiencies achieved in providing services, cost-savings to state and local governments, and possible improvements to the program. The legislative management shall report its findings and

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

**SECTION 9. STATE AUDITOR - PERFORMANCE AUDIT - FAMILY HEALTH DIVISION - STATE DEPARTMENT OF HEALTH.** The state auditor shall contract for a performance audit of the family health division of the state department of health during the biennium beginning July 1, 2011, and ending June 30, 2013. The state auditor may bill the state department of health for costs associated with the performance audit. The results of the performance audit must be presented to the legislative audit and fiscal review committee and filed with the appropriations committees of the sixty-third legislative assembly.

**SECTION 10. EMERGENCY.** Section 5 of this Act is declared to be an emergency measure.

Approved May 5, 2011  
Filed May 5, 2011



**CHAPTER 5**

**HOUSE BILL NO. 1005**

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

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 that agency, for the biennium beginning July 1, 2011, and ending June 30, 2013, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$556,080	\$45,293	\$601,373
Operating expenses	<u>126,505</u>	<u>95,000</u>	<u>221,505</u>
Total general fund	\$682,585	\$140,293	\$822,878
Full-time equivalent positions	4.00	0.00	4.00

**SECTION 2. ONE-TIME FUNDING.** The following amounts reflect the one-time funding items approved by the sixty-first legislative assembly for the 2009-11 biennium:

<u>One-Time Funding Description</u>	<u>2009-11</u>	<u>2011-13</u>
Federal fiscal stimulus	<u>\$18,000</u>	<u>\$0</u>
Total other funds	\$18,000	\$0

**SECTION 3. LEGISLATIVE INTENT - SUICIDE PREVENTION PROGRAM - REPORT TO SIXTY-THIRD LEGISLATIVE ASSEMBLY.** It is the intent of the sixty-second legislative assembly that the Indian affairs commission work in conjunction with the state department of health to develop a suicide prevention program, including outreach, education, administration, and implementation of grants for suicide prevention activities for the biennium beginning July 1, 2011, and ending June 30, 2013. The Indian affairs commission shall report to the appropriations committees of the sixty-third legislative assembly on the use of the funding provided for this program in the operating expenses line item in section 1 of this Act, including statistics on the effectiveness of the program, for the biennium beginning July 1, 2011, and ending June 30, 2013.

Approved May 5, 2011  
Filed May 5, 2011

## CHAPTER 6

### HOUSE BILL NO. 1006

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

AN ACT to provide an appropriation for defraying the expenses of the North Dakota aeronautics commission; 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 aeronautics commission for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2011, and ending June 30, 2013, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$887,234	\$118,405	\$1,005,639
Operating expenses	1,841,432	416,617	2,258,049
Capital assets	400,000	380,000	780,000
Grants	<u>9,790,000</u>	<u>(750,000)</u>	<u>9,040,000</u>
Total all funds	\$12,918,666	\$165,022	\$13,083,688
Less estimated income	<u>12,368,666</u>	<u>165,022</u>	<u>12,533,688</u>
Total general fund	\$550,000	\$0	\$550,000
Full-time equivalent positions	6.00	0.00	6.00

**SECTION 2. LIMITED DEPLOYMENT-COOPERATIVE AIRSPACE PROJECT.** The aeronautics commission may use federal or special funds appropriated in section 1 of this Act to support the limited deployment-cooperative airspace project involving ADS-B navigational system general aviation equipment.

**SECTION 3. EMERGENCY.** The sum of \$450,000 from special funds for aircraft replacement included in the capital assets line item in section 1 of this Act is declared to be an emergency measure.

Approved May 5, 2011  
Filed May 5, 2011

## CHAPTER 7

### HOUSE BILL NO. 1007

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

AN ACT to provide an appropriation for defraying the expenses of the veterans' home and department of veterans' affairs; to create and enact a new section to chapter 37-15 of the North Dakota Century Code, relating to a memorial fund; and to provide for legislative management studies.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the veterans' home and department of veterans' affairs for the purpose of defraying the expenses of the veterans' home and department of veterans' affairs, for the biennium beginning July 1, 2011, and ending June 30, 2013, as follows:

Subdivision 1.

VETERANS' HOME

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$11,538,855	\$2,378,006	\$13,916,861
Operating expenses	4,561,857	1,380,428	5,942,285
Capital assets	259,906	445,594	705,500
New veterans' home	<u>2,043,264</u>	<u>(1,711,264)</u>	<u>332,000</u>
Total all funds	\$18,403,882	\$2,492,764	\$20,896,646
Less estimated income	<u>13,677,293</u>	<u>1,666,030</u>	<u>15,343,323</u>
Total general fund	<u>\$4,726,589</u>	<u>\$826,734</u>	<u>\$5,553,323</u>
Full-time equivalent positions	120.72	0.00	120.72

Subdivision 2.

VETERANS' AFFAIRS

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Veterans' affairs	<u>\$1,031,487</u>	<u>\$105,732</u>	<u>\$1,137,219</u>
Total general fund	\$1,031,487	\$105,732	\$1,137,219
Full-time equivalent positions	7.00	0.00	7.00

## Subdivision 3.

## BILL TOTAL

	Base Level	Adjustments or Enhancements	Appropriation
Grand total general fund	\$5,758,076	\$932,466	\$6,690,542
Grand total special funds	<u>13,677,293</u>	<u>1,631,030</u>	<u>15,308,323</u>
Grand total all funds	\$19,435,369	\$2,563,496	\$21,998,865
Full-time equivalent positions	127.72	0.00	127.72

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-THIRD LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-first legislative assembly for the 2009-11 biennium and the 2011-13 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2009-11</u>	<u>2011-13</u>
Veterans' home		
Electronic health record system	\$98,400	\$0
Construction project manager	90,088	0
General fund salary funding of new facility positions	502,240	0
Veterans' home building	7,944,991	0
Exterior finishings - New building	350,000	0
Geothermal heating - New building	3,039,414	0
Federal fiscal stimulus	3,158,005	0
Department of veterans' affairs		
Discharge project	0	22,000
Website	<u>0</u>	<u>15,593</u>
Total all funds	\$15,183,138	\$37,593
Less estimated income	<u>3,158,005</u>	<u>0</u>
Total general fund	\$12,025,133	\$37,593

The 2011-13 one-time funding amounts are not a part of the agencies' base budget for the 2013-15 biennium. The veterans' home and department of veterans' affairs shall report to the appropriations committees of the sixty-third legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 3.** A new section to chapter 37-15 of the North Dakota Century Code is created and enacted as follows:

**Melvin Norgard memorial fund - Creation.**

There is created in the state treasury the Melvin Norgard memorial fund. All income related to a bequest made to the veterans' home by Melvin Norgard, including mineral lease income, royalties, and sale proceeds, must be transferred or deposited into the Melvin Norgard memorial fund. Notwithstanding any other provision of law, the state treasurer shall invest moneys in the fund in accordance with section 21-10-07. Investment income of the fund must be retained in the fund. Moneys in the fund are available, subject to legislative appropriations, for projects and programs to benefit and serve the residents of the veterans' home. The legislative assembly shall consider recommendations of the governing board of the veterans' home when determining appropriations from this fund for projects and programs to benefit and serve the residents of the veterans' home.

**SECTION 4. LEGISLATIVE MANAGEMENT STUDY - DISPOSITION OF THE OLD VETERANS' HOME FACILITY.** During the 2011-12 interim, the legislative management shall consider studying all available options, including demolition, for the disposition of the old veterans' home facility. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

**SECTION 5. LEGISLATIVE MANAGEMENT STUDY - DELIVERY OF SERVICES TO VETERANS.** During the 2011-12 interim, the legislative management shall consider studying the delivery of services to veterans, including the consistency in training and of the provision of services by county veterans' service officers. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

Approved May 5, 2011  
Filed May 5, 2011

## CHAPTER 8

### HOUSE BILL NO. 1008

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

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

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated 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, 2011, and ending June 30, 2013, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$4,762,225	\$594,630	\$5,356,855
Operating expenses	1,304,263	155,200	1,459,463
Contingency	<u>20,000</u>	<u>0</u>	<u>20,000</u>
Total special funds	\$6,086,488	\$749,830	\$6,836,318
Full-time equivalent positions	29.00	0.00	29.00

Approved April 4, 2011

Filed April 4, 2011

## CHAPTER 9

### HOUSE BILL NO. 1009

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

AN ACT to provide an appropriation for defraying the expenses of the state fair association; and to create and enact a new section to chapter 4-02.1 of the North Dakota Century Code, relating to the naming of the state fair grandstand.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the state fair association for the purpose of defraying the expenses of the state fair association, for the biennium beginning July 1, 2011, and ending June 30, 2013, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Capital assets	\$210,000	\$0	\$210,000
Premiums	487,150	32,850	520,000
Total general fund	\$697,150	\$32,850	\$730,000

**SECTION 2. ONE-TIME FUNDING.** The following amounts reflect the one-time funding items approved by the sixty-first legislative assembly for the 2009-11 biennium:

<u>One-Time Funding Description</u>	<u>2009-11</u>	<u>2011-13</u>
Grandstand construction	\$18,000,000	\$0
Total all funds	\$18,000,000	\$0
Total special funds	3,000,000	0
Total general fund	\$15,000,000	\$0

**SECTION 3.** A new section to chapter 4-02.1 of the North Dakota Century Code is created and enacted as follows:

**The Iverson grandstand.**

The grandstand constructed by the state fair association on the state fairgrounds during the 2009-11 biennium is designated the Iverson grandstand.

Approved April 8, 2011  
Filed April 11, 2011

## CHAPTER 10

### HOUSE BILL NO. 1010

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

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 any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the council on the arts for the purpose of defraying the expenses of the council on the arts, for the biennium beginning July 1, 2011, and ending June 30, 2013, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$692,447	\$49,133	\$741,580
Operating expenses	292,045	(16,470)	275,575
Grants	<u>1,772,278</u>	<u>429,029</u>	<u>2,201,307</u>
Total all funds	\$2,756,770	\$461,692	\$3,218,462
Less estimated income	<u>1,445,486</u>	<u>409,374</u>	<u>1,854,860</u>
Total general fund	\$1,311,284	\$52,318	\$1,363,602
Full-time equivalent positions	5.00	0.00	5.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-THIRD LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-first legislative assembly for the 2009-11 biennium and the 2011-13 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2009-11</u>	<u>2011-13</u>
Grants	\$57,450	\$0
Federal fiscal stimulus - 2009	<u>290,000</u>	<u>0</u>
Total all funds	\$347,450	\$0
Less estimated income	<u>290,000</u>	<u>0</u>
Total general fund	\$57,450	\$0

**SECTION 3. APPROPRIATION.** All income from the cultural endowment fund is appropriated to the council on the arts for the furthering of the cultural arts in the state for the biennium beginning July 1, 2011, and ending June 30, 2013.

Approved April 19, 2011  
Filed April 19, 2011



## CHAPTER 11

### HOUSE BILL NO. 1011

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

AN ACT to provide an appropriation for defraying the expenses of the highway patrol; 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 highway patrol for the purpose of defraying the expenses of the highway patrol, for the biennium beginning July 1, 2011, and ending June 30, 2013, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Administration	\$2,926,419	\$233,423	\$3,159,842
Field operations	37,198,354	4,007,915	41,206,269
Law enforcement training academy	<u>1,496,942</u>	<u>105,546</u>	<u>1,602,488</u>
Total all funds	\$41,621,715	\$4,346,884	\$45,968,599
Less estimated income	<u>10,893,730</u>	<u>631,595</u>	<u>11,525,325</u>
Total general fund	\$30,727,985	\$3,715,289	\$34,443,274
Full-time equivalent positions	194.00	0.00	194.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-THIRD LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-first legislative assembly for the 2009-11 biennium and the 2011-13 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2009-11</u>	<u>2011-13</u>
Capital security upgrade	\$80,000	\$0
Commercial vehicle information exchange window system	100,000	0
Weigh station repairs	100,000	0
Digital radio equipment upgrade	0	<u>1,237,000</u>
Total all funds	\$280,000	\$1,237,000
Total special funds	0	<u>161,000</u>
Total general fund	\$280,000	\$1,076,000

The 2011-13 one-time funding amounts are not a part of the entity's base budget for the 2013-15 biennium. The highway patrol shall report to the appropriations committees of the sixty-third legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 3. SPECIAL FUNDS TRANSFER.** The less estimated income line item in section 1 of this Act includes the sum of \$5,025,762, 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, 2011, and ending June 30, 2013.

**SECTION 4. PAYMENTS TO HIGHWAY PATROL OFFICERS.** Each patrol officer of the 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, 2011, and ending June 30, 2013. The payments are in lieu of reimbursement for meals and other expenses, except lodging, while in travel status within the state of North Dakota or while at their respective home stations. The amounts must be paid at the time and in the same manner as salaries are paid to members of the highway patrol and may be paid without the presentation of receipts or other memorandums.

**SECTION 5. LEGISLATIVE MANAGEMENT STUDY - HIGHWAY PATROL TRAINING ACADEMY.** During the 2011-12 interim, the legislative management shall consider studying the feasibility and desirability of relocating the highway patrol training academy or portions of the training academy. The study, if conducted, must review options for relocating the training academy, options for relocating the emergency operations vehicle training course, and options for constructing a highway patrol shooting range. The legislative management shall report its findings and recommendations, together with any legislation needed to implement the recommendations, to the sixty-third legislative assembly.

Approved May 9, 2011  
Filed May 9, 2011

## CHAPTER 12

### HOUSE BILL NO. 1012

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

AN ACT to provide an appropriation for defraying the expenses of the department of transportation; to provide appropriations to the state treasurer for transportation funding distributions; to repeal section 2 of chapter 573 of the 2009 Session Laws, relating to highway-rail grade safety projects; to provide for transfers; to provide for borrowing authority; to provide an exemption; 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 department of transportation for the purpose of defraying the expenses of the department of transportation, for the biennium beginning July 1, 2011, and ending June 30, 2013, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$147,373,254	\$18,593,142	\$165,966,396
Operating expenses	188,805,014	15,285,236	204,090,250
Capital assets	661,988,548	281,541,283	943,529,831
County and township road reconstruction program	0	142,000,000	142,000,000
Grants	69,766,101	(1,998,694)	67,767,407
Federal stimulus funds	<u>0</u>	<u>24,119,575</u>	<u>24,119,575</u>
Total all funds	\$1,067,932,917	\$479,540,542	\$1,547,473,459
Less estimated income	<u>1,067,932,917</u>	<u>473,690,542</u>	<u>1,541,623,459</u>
Total general fund	\$0	\$5,850,000	\$5,850,000
Full-time equivalent positions	1,054.50	9.00	1,063.50

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-THIRD LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-first legislative assembly for the 2009-11 biennium and the 2011-13 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2009-11</u>	<u>2011-13</u>
Federal stimulus funds	\$176,082,671	\$24,119,575
Devils Lake area highway project	4,600,000	5,850,000
Extraordinary state highway maintenance	0	228,600,000
County and township road reconstruction	<u>0</u>	<u>142,000,000</u>
Total all funds	\$180,682,671	\$400,569,575
Total special funds	<u>176,082,671</u>	<u>394,719,575</u>
Total general fund	\$4,600,000	\$5,850,000

The 2011-13 one-time funding amounts are not part of the entity's base budget for the 2013-15 biennium. The department of transportation shall report to the appropriations committees of the sixty-third legislative assembly on the use of the one-time funding for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 3. APPROPRIATION - TRANSFER - HIGHWAY-RAIL GRADE CROSSING SAFETY PROJECTS.** There is appropriated out of any moneys in the highway-rail grade crossing safety fund in the state treasury, not otherwise appropriated, the sum of \$1,431,000, or so much of the sum as may be necessary, to the department of transportation for the funding of grants for highway-rail grade crossing safety projects, including grants for the reduction of associated special assessments, for the biennium beginning July 1, 2011, and ending June 30, 2013. On June 30, 2013, the state treasurer shall transfer any unexpended and unobligated balance in the highway-rail grade safety projects fund to the highway tax distribution fund.

Up to \$1,201,000 of funds provided under this section may be used by the department of transportation for highway-rail grade crossing safety projects approved by the department and for which funding was obligated during the biennium beginning July 1, 2009, and ending June 30, 2011.

Up to \$230,000 of funds provided under this section may be used by the department of transportation for additional highway-rail grade crossing safety project grants subject to the following requirements:

1. A political subdivision seeking a grant shall file an application with the department of transportation.
2. A political subdivision grant applicant shall provide ten percent matching funds for the project costs but no local matching funds are required for a highway-rail grade crossing on a state highway.
3. Grant funds may be allocated for development of railroad quiet zones, installation or upgrading of active warning devices, resurfacing crossings, building of grade separations, and other costs associated with these improvements.
4. An applicant for grant approval for development of a railroad quiet zone shall provide the department of transportation a copy of the notice of intent filed with the federal railroad administration regarding establishment of a proposed quiet zone and copies of any subsequent filings with or orders from the federal railroad administration relating to the notice of intent.
5. Grants provided to a city may not exceed a cumulative amount of \$80,000.

**SECTION 4. APPROPRIATION - BORROWING AUTHORITY - ADDITIONAL EMERGENCY RELIEF PROGRAM.** The department of transportation may borrow the sum of \$120,000,000, or so much of the sum as may be necessary, from the Bank of North Dakota for the purpose of providing funding for emergency relief projects on the state highway system, for the period beginning with the effective date of this Act and ending June 30, 2013. Any funding borrowed from the Bank of North Dakota under this section is appropriated to the department of transportation for emergency relief projects on the state highway system. Funding appropriated under this section is considered one-time funding and is not to be considered a part of the department's 2013-15 base budget request. Any federal funding received for projects receiving

funding under this section must be used to repay the loan from the Bank of North Dakota.

**SECTION 5. APPROPRIATION - STATE TREASURER - 2009-11 BIENNIUM TRANSPORTATION FUNDING DISTRIBUTIONS.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$35,000,000, or so much of the sum as may be necessary, to the state treasurer for the purpose of providing transportation funding distributions, for the period beginning with the effective date of this Act and ending June 30, 2011. The funding provided in this section is considered a one-time funding item. The state treasurer shall distribute the funds provided under this section prior to June 30, 2011, as follows:

1. Eighty percent to non-oil-producing counties and cities pursuant to subsection 4 of section 54-27-19.
2. Twenty percent to counties and townships in non-oil-producing counties pursuant to section 54-27-19.1. Organized townships are not required to provide matching funds to receive distributions under this section.

For purposes of this section, a "non-oil-producing county" means a county that did not receive an allocation of funding under section 57-51-15 during state fiscal year 2010 or a county that received a total allocation under section 57-51-15 of less than \$500,000 for state fiscal year 2010.

**SECTION 6. APPROPRIATION - STATE TREASURER - 2011-13 BIENNIUM TRANSPORTATION FUNDING DISTRIBUTIONS.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$25,000,000, or so much of the sum as may be necessary, to the state treasurer for the purpose of providing transportation funding distributions, for the biennium beginning July 1, 2011, and ending June 30, 2013. The funding provided in this section is considered a one-time funding item. The state treasurer shall distribute the funds provided under this section on April 1, 2012, as follows:

1. Eighty percent to non-oil-producing counties and cities pursuant to subsection 4 of section 54-27-19.
2. Twenty percent to counties and townships in non-oil-producing counties pursuant to section 54-27-19.1. Organized townships are not required to provide matching funds to receive distributions under this section.

For purposes of this section, a "non-oil-producing county" means a county that did not receive an allocation of funding under section 57-51-15 during state fiscal year 2011 or a county that received a total allocation under section 57-51-15 of less than \$500,000 for state fiscal year 2011.

**SECTION 7. APPROPRIATION - TRANSFER - GENERAL FUND TO HIGHWAY FUND.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$370,600,000, which the office of management and budget shall transfer to the highway fund during the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 8. LINE ITEM TRANSFERS.** The director of the department of transportation may transfer between the salaries and wages, operating expenses, capital assets, and grants line items in section 1 of this Act when it is cost-effective for construction and maintenance of highways. The department of transportation shall

notify the office of management and budget of any transfers made pursuant to this section.

**SECTION 9. REPEAL.** Section 2 of chapter 573 of the 2009 Session Laws is repealed.

**SECTION 10. COUNTY AND TOWNSHIP ROAD RECONSTRUCTION PROGRAM.**

1. The sum of \$142,000,000, or so much of the sum as may be necessary, included in the county and township road reconstruction program line item in section 1 of this Act, must be used to rehabilitate or reconstruct county and township paved and unpaved roads.
  - a. Funding allocations to counties are to be made by the department of transportation based on the needs assessment study conducted by the upper great plains transportation institute, titled "Additional Road Investments Needed to Support Oil and Gas Production and Distribution in North Dakota", dated December 9, 2010.
  - b. Counties identified in the study are eligible for this funding.
2. Each county requesting funding under this section for county or township roads shall submit the request in accordance with criteria developed by the department of transportation.
  - a. The request shall include a proposed plan for funding projects that rehabilitate or reconstruct paved and unpaved roads within the county.
  - b. The plan shall be based on the upper great plains transportation institute study, actual road conditions, and integration with state highway and other county road projects.
  - c. Funds shall not be used for routine maintenance.
3. The department of transportation, in consultation with the county, may approve the plan or approve the plan with amendments.
4. The funding included in the county and township road reconstruction program line item in section 1 of this Act may be used for:
  - a. Ninety percent of the cost of the approved paved roadway projects not to exceed the funding available for that county.
  - b. Twenty-five percent of the cost of the approved unpaved roadway projects not to exceed the funding available for that county.
  - c. Funding may be used for construction, engineering, and plan development costs.
5. Upon approval of the plan, the department of transportation shall transfer to the county the approved funding for engineering and plan development costs.
6. Upon execution of a construction contract by the county, the department of transportation shall transfer to the county the approved funding to be distributed for county and township road rehabilitation and reconstruction projects.

7. The recipient counties shall report to the department of transportation upon awarding of each contract and upon completion of each project in a manner prescribed by the department.
8. The funding included in the county and township road reconstruction line item in section 1 of this Act may be applied to engineering and design costs incurred on related projects as of January 1, 2011.

**SECTION 11. EXTRAORDINARY STATE HIGHWAY MAINTENANCE.** The funding included in the capital assets line item in section 1 of this Act relating to extraordinary state highway maintenance may be applied to engineering and design costs incurred on related projects as of January 1, 2011.

**SECTION 12. FARGO DISTRICT OFFICE LOCATION - EXEMPTION.** The sum of \$800,000 included in the capital assets line item of section 1 of this Act is for the construction of an equipment storage facility at the Fargo district office location which may only be used pursuant to the provisions of this section.

Notwithstanding sections 54-01-05.2 and 54-01-05.5, the department of transportation shall offer for sale the entire parcel of land, including buildings, owned by the department of transportation at the Fargo district office location which is at 503 38<sup>th</sup> street south in the city of Fargo. In consideration for the property, the buyer must provide the department of transportation with an alternative parcel of land in fee simple to be used as a new location for the Fargo district office. The parcel of land must be located within the interstate storm gates of the cities of Fargo and West Fargo, be of suitable size and condition for operations of the Fargo district office, and be readily accessible to the interstate system. In consideration for the department of transportation property, the buyer shall construct or otherwise provide the buildings necessary for the operations of the Fargo district office. If requested, the director of the department of transportation shall provide potential buyers with general land and building requirements necessary for the operations of the Fargo district office. The director of the department of transportation shall have the authority to determine whether the location and buildings adequately address the operations needs of the Fargo district office. The property shall remain open to buyers until May 1, 2012. The department of transportation may proceed with the construction of the equipment storage building at the current Fargo district office location if an offer is not accepted by the department of transportation by May 1, 2012.

**SECTION 13. LEGISLATIVE MANAGEMENT STUDY - STATE AGENCY AIRPLANES.** During the 2011-12 interim, the legislative management shall consider studying the use of state-owned airplanes. The study, if conducted, must include a review of airplanes owned by state agencies, the justification for each airplane, the frequency of use of each airplane, options for purchasing or leasing new airplanes, and the feasibility and desirability of requiring state airplanes to be managed by state fleet services. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

**SECTION 14. EMERGENCY.** Funding of \$228,600,000 in the capital assets line item relating to extraordinary state highway maintenance and \$142,000,000 in the county and township road reconstruction line item in section 1 of this Act and sections 4, 5, 10, and 12 of this Act are declared to be an emergency measure.

## CHAPTER 13

### HOUSE BILL NO. 1013

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

AN ACT to provide an appropriation for defraying the expenses of the commissioner of university and school lands; to provide for distributions from permanent funds; to amend and reenact sections 15-01-02, 57-51-15, 57-62-03, 57-62-03.1, 57-62-04, 57-62-05, and 57-62-06 of the North Dakota Century Code, relating to the powers of the board of university and school lands, the duties of the commissioner of university and school lands, the apportionment of oil and gas gross production tax proceeds, the energy development impact office, and the duties of the energy development impact director; 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 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, 2011, and ending June 30, 2013, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$3,214,850	\$930,974	\$4,145,824
Operating expenses	739,952	691,144	1,431,096
Capital assets	10,000	0	10,000
Grants	9,777,759	90,000,510	99,778,269
Contingencies	<u>50,000</u>	<u>50,000</u>	<u>100,000</u>
Total special funds	\$13,792,561	\$91,672,628	\$105,465,189
Full-time equivalent positions	21.75	3.00	24.75

**SECTION 2. ENERGY INFRASTRUCTURE AND IMPACT GRANTS - EXEMPTION.** Section 54-44.1-11 does not apply to appropriations made for energy infrastructure and impact grants in section 1 of this Act.

**SECTION 3. APPROPRIATION LINE ITEM TRANSFERS.** Upon approval of the board of university and school lands, the commissioner of university and school lands may transfer between the various line items in section 1 of this Act, including transfers from the contingencies line to all other line items. The commissioner shall notify the office of management and budget of each transfer made pursuant to this section.

**SECTION 4. DISTRIBUTIONS TO STATE INSTITUTIONS.** Pursuant to section 1 of article IX of the Constitution of North Dakota, the board of university and school lands shall distribute during the biennium beginning July 1, 2011, and ending June 30, 2013, the following amounts, from the permanent funds managed for the benefit of the following entities:

Common schools	\$92,514,000
North Dakota state university	1,424,000



University of North Dakota	1,310,000
Youth correctional center	528,000
School for the deaf	454,000
State college of science	523,429
State hospital	603,429
Veterans' home	279,429
Valley City state university	286,000
North Dakota vision services - school for the blind	247,429
Mayville state university	184,000
Dakota college at Bottineau	31,429
Dickinson state university	31,429
Minot state university	<u>31,429</u>
Total	\$98,448,003

**SECTION 5. AMENDMENT.** Section 15-01-02 of the North Dakota Century Code is amended and reenacted as follows:

**15-01-02. Powers - Control of public lands and permanent funds.**

The board has:

1. Full control of the selection, appraisalment, rental, sale, disposal, and management of:
  - a. Lands donated or granted by or received from the United States or from any other source for the support and maintenance of the common schools.
  - b. All lands which fall to the state by escheat.
  - c. All lands donated or granted by or received from the United States or from any other source for the maintenance of the educational, penal, or charitable institutions.
  - d. All lands acquired by the state through the investment of the permanent school funds of the state as the result of mortgage foreclosure or otherwise.
2. Full control of the investment of the permanent funds derived from the sale of any of the lands described in subsection 1.
3. Full control of such percent of the proceeds of any sale of public lands as may be granted to the state by the United States on such sale.
4. Full control of the proceeds of any property that fall to the state by escheat and of the proceeds of all gifts and donations to the state for the support or maintenance of the common schools, and of all other property otherwise acquired by the state for the maintenance of the common schools. Any gift to the state not specifically appropriated to any other purpose must be considered as a gift for the support and maintenance of the common schools.
5. Authority to expend moneys for the purpose of making refunds in cases in which an error has been made by the board, or a person dealing with the board, with regard to any of the lands, minerals, funds, proceeds, or any other kind of property managed by the board. Moneys expended to make refunds must come from the same fund or account into which the money to be refunded was originally placed.

6. Authority to award and distribute energy infrastructure and impact grants from moneys deposited in the oil and gas impact grant fund, except that grants awarded annually may not exceed sixty percent of the biennial appropriation for energy infrastructure and impact grants. The board may create an advisory committee to assist the board in making its grant award determinations.

<sup>2</sup> **SECTION 6. AMENDMENT.** Section 57-51-15 of the North Dakota Century Code is amended and reenacted as follows:

**57-51-15. Apportionment and use of proceeds of tax.**

The gross production tax provided for in this chapter must be apportioned as follows:

1. First the tax revenue collected under this chapter equal to one percent of the gross value at the well of the oil and one-fifth of the tax on gas must be deposited with the state treasurer who shall:
  - a. Credit ~~thirty-three and one-third percent of the revenues~~ to the oil and gas impact grant fund, but not in an amount exceeding ~~eight~~ one hundred million dollars per biennium;
  - b. Allocate five hundred thousand dollars per fiscal year to each city in an oil-producing county which has a population of seven thousand five hundred or more and more than two percent of its private covered employment engaged in the mining industry, according to data compiled by job service North Dakota. The allocation under this subdivision must be doubled if the city has more than seven and one-half percent of its private covered employment engaged in the mining industry, according to data compiled by job service North Dakota; and
  - c. Credit the remaining revenues to the state general fund.
2. 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 as follows:
  - a. The first two million dollars must be allocated to the county.
  - b. The next one million dollars must be allocated seventy-five percent to the county and twenty-five percent to the state general fund.
  - c. The next one million dollars must be allocated fifty percent to the county and fifty percent to the state general fund.
  - d. The next fourteen million dollars must be allocated twenty-five percent to the county and seventy-five percent to the state general fund.
  - e. All annual revenue remaining after the allocation in subdivision d must be allocated ten percent to the county and ninety percent to the state general fund.

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<sup>2</sup> Section 57-51-15 was also amended by section 1 of Senate Bill No. 2129, chapter 484, and section 1 of House Bill No. 1077, chapter 485.

3. The amount to which each county is entitled under subsection 2 must be allocated within the county so the first five million three hundred fifty thousand dollars is allocated under subsection 4 for each fiscal year and any amount received by a county exceeding five million three hundred fifty thousand dollars is credited by the county treasurer to the county infrastructure fund and allocated under subsection 5.
4.
  - a. Forty-five percent of all revenues allocated to any county for allocation under this subsection must be credited by the county treasurer to the county general fund. However, the allocation to a county under this subdivision must be credited to the state general fund if during that fiscal year the county does not levy 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 of all revenues allocated to any county for allocation under this subsection must be apportioned by the county treasurer no less than quarterly to school districts within the county on the average daily attendance distribution basis, as certified to the county treasurer by the county superintendent of schools. However, no school district may receive in any single academic year an amount under this subsection greater than the county average per student cost multiplied by seventy percent, then multiplied by the number of students in average daily attendance or the number of children of school age in the school census for the county, whichever is greater. Provided, however, that in any county in which the average daily attendance or the school census, whichever is greater, is fewer than four hundred, the county is entitled to one hundred twenty percent of the county average per student cost multiplied by the number of students in average daily attendance or the number of children of school age in the school census for the county, whichever is greater. Once this level has been reached through distributions under this subsection, all excess funds to which the school district would be entitled as part of its thirty-five percent share must be deposited instead in the county general fund. The county superintendent of schools of each oil-producing county shall certify to the county treasurer by July first of each year the amount to which each school district is limited pursuant to this subsection. As used in this subsection, "average daily attendance" means the average daily attendance for the school year immediately preceding the certification by the county superintendent of schools required by this subsection.

The countywide allocation to school districts under this subdivision is subject to the following:

- (1) The first three hundred fifty thousand dollars is apportioned entirely among school districts in the county.
- (2) The next three hundred fifty thousand dollars is apportioned seventy-five percent among school districts in the county and twenty-five percent to the county infrastructure fund.
- (3) The next two hundred sixty-two thousand five hundred dollars is apportioned two-thirds among school districts in the county and one-third to the county infrastructure fund.

- (4) The next one hundred seventy-five thousand dollars is apportioned fifty percent among school districts in the county and fifty percent to the county infrastructure fund.
  - (5) Any remaining amount is apportioned to the county infrastructure fund except from that remaining amount the following amounts are apportioned among school districts in the county:
    - (a) Four hundred ninety thousand dollars, for counties having a population of three thousand or fewer.
    - (b) Five hundred sixty thousand dollars, for counties having a population of more than three thousand and fewer than six thousand.
    - (c) Seven hundred thirty-five thousand dollars, for counties having a population of six thousand or more.
- c. Twenty percent of all revenues allocated to any county for allocation under this subsection must be apportioned no less than quarterly by the state treasurer to the incorporated cities of the county. Apportionment among cities under this subsection must be based upon the population of each incorporated city according to the last official decennial federal census. A city may not receive an allocation for a fiscal year under this subsection and subsection 5 which totals more than seven hundred fifty dollars per capita. Once this level has been reached through distributions under this subsection, all excess funds to which any city would be entitled except for this limitation must be deposited instead in that county's general fund. 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. If a city receives a direct allocation under subsection 1, the allocation to that city under this subsection is limited to sixty percent of the amount otherwise determined for that city under this subsection and the amount exceeding this limitation must be reallocated among the other cities in the county.
5. a. Forty-five percent of all revenues allocated to a county infrastructure fund under subsections 3 and 4 must be credited by the county treasurer to the county general fund. However, the allocation to a county under this subdivision must be credited to the state general fund if during that fiscal year the county does not levy 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 of all revenues allocated to the county infrastructure fund under subsections 3 and 4 must be allocated by the board of county commissioners to or for the benefit of townships in the county on the basis of applications by townships for funding to offset oil and gas development impact to township roads or other infrastructure needs or applications by school districts for repair or replacement of school district vehicles necessitated by damage or deterioration attributable to travel on oil and gas development-impacted roads. An organized township is not eligible for an allocation of funds under this subdivision unless during that fiscal year that township levies at least ten mills for township purposes. For

unorganized townships within the county, the board of county commissioners may expend an appropriate portion of revenues under this subdivision to offset oil and gas development impact to township roads or other infrastructure needs in those townships. The amount deposited during each calendar year in the county infrastructure fund which is designated for allocation under this subdivision and which is unexpended and unobligated at the end of the calendar year must be transferred by the county treasurer to the county road and bridge fund for use on county road and bridge projects.

- c. Twenty percent of all revenues allocated to any county infrastructure fund under subsections 3 and 4 must be allocated by the county treasurer no less than quarterly to the incorporated cities of the county. Apportionment among cities under this subsection must be based upon the population of each incorporated city according to the last official decennial federal census. A city may not receive an allocation for a fiscal year under this subsection and subsection 4 which totals more than seven hundred fifty dollars per capita. Once this per capita limitation has been reached, all excess funds to which a city would otherwise be entitled must be deposited instead in that county's general fund. If a city receives a direct allocation under subsection 1, the allocation to that city under this subsection is limited to sixty percent of the amount otherwise determined for that city under this subsection and the amount exceeding this limitation must be reallocated among the other cities in the county.
6. Within sixty days after the end of each fiscal year, the board of county commissioners of each county that has received an allocation under this section shall file a report for the fiscal year with the tax commissioner, in a format prescribed by the tax commissioner, showing:
    - a. The amount received by the county in its own behalf, the amount of those funds expended for each purpose to which funds were devoted, and the share of county property tax revenue expended for each of those purposes, and the amount of those funds unexpended at the end of the fiscal year; and
    - b. The amount available in the county infrastructure fund for allocation to or for the benefit of townships or school districts, the amount allocated to each organized township or school district and the amount expended from each such allocation by that township or school district, the amount expended by the board of county commissioners on behalf of each unorganized township for which an expenditure was made, and the amount available for allocation to or for the benefit of townships or school districts which remained unexpended at the end of the fiscal year.

Within sixty days after the time when reports under this subsection were due, the tax commissioner shall provide a report to the legislative council compiling the information from reports received under this subsection.

In developing the format for reports under this subsection, the tax commissioner shall consult the energy development, infrastructure and impact office and at least two county auditors from oil-producing counties.

**SECTION 7. AMENDMENT.** Section 57-62-03 of the North Dakota Century Code is amended and reenacted as follows:

### **57-62-03. Loans - Terms and conditions - Repayment.**

The board of university and school lands is authorized to make loans to coal development-impacted counties, cities, and school districts before or after the beginning of actual coal mining from moneys deposited in the coal development trust fund established by subsection 2 of section 57-62-02. Loans made prior to actual mining must be preceded by site permitting and by beginning actual construction of the mine or its mine mouth facility. Loans may be made for any purpose for which a grant may be made pursuant to this chapter, but before making any loan the board of university and school lands shall receive the recommendation of the energy development infrastructure and impact office. The board of university and school lands shall prescribe the terms and conditions of such loans within the provisions of this chapter and shall require a warrant executed by the governing body of the county, city, or school district as evidence of such loan. The warrants must bear interest at a rate not to exceed six percent. The warrants shall be payable only from the allocations of moneys from the coal development fund to the borrowing county, city, or school district and shall not constitute a general obligation of the county, city, or school district nor may such loans be considered as indebtedness of the county, city, or school district. Loans made in advance of actual coal mining must provide that repayment is to begin when the borrowing county, city, or school district receives allocations from the coal development fund. The terms of the loan must provide that not less than ten percent of each allocation made to the borrowing county, city, or school district pursuant to this chapter must be withheld by the state treasurer to repay the principal of the warrants and the interest thereon. The amount withheld by the state treasurer as payment of interest must be deposited in the general fund and the amount withheld by the state treasurer as payment of principal must be remitted to the board of university and school lands and deposited by the board in the trust fund provided for in subsection 2 of section 57-62-02. The warrants executed by the county, city, or school district have all of the qualities and incidents of negotiable paper and are not subject to taxation by the state of North Dakota or by any political subdivision thereof.

The board of university and school lands is authorized to sell such warrants to other parties and the proceeds of such sale which constitute principal must be deposited in the coal development trust fund and that which constitutes interest in the general fund. If the future allocations of moneys to the borrowing county, city, or school district should, for any reason, permanently cease, the loan shall be canceled except that if the county, city, or school district is merged with another county, city, or school district which receives an allocation of moneys from the coal development fund, the surviving county, city, or school district is obligated to repay the loan from such allocation. If the loan is canceled due to the permanent cessation of allocations of moneys to the county, city, or school district pursuant to this chapter, the board of university and school lands shall cancel those warrants it holds from such county, city, or school district and shall pay from any moneys in the trust fund provided for in subsection 2 of section 57-62-02 the principal and interest, as it becomes due, on those warrants of the county, city, or school district which are held by another party.

**SECTION 8. AMENDMENT.** Section 57-62-03.1 of the North Dakota Century Code is amended and reenacted as follows:

#### **57-62-03.1. Oil and gas impact grant fund –Continuing appropriation.**

The moneys accumulated in the oil and gas impact grant fund must be allocated as provided by law and as appropriated by the legislative assembly for distribution through grants by the energy development infrastructure and impact office to oil and gas development-impacted cities, counties, school districts, and other taxing districts

or for industrial commission enforcement of laws and rules relating to geophysical exploration in this state. ~~The amounts deposited in the oil and gas impact grant fund under subsection 1 of section 57-51-15 are appropriated as a standing and continuing appropriation to the energy development impact office for grants as provided in this section.~~

**SECTION 9. AMENDMENT.** Section 57-62-04 of the North Dakota Century Code is amended and reenacted as follows:

**57-62-04. Energy ~~development~~infrastructure and impact office - Appointment of director.**

There is hereby created an energy ~~development~~infrastructure and impact office, to be a division within the office of the commissioner of the board of university and school lands, the director of which must be appointed by and serve at the pleasure of the board of university and school lands. The director shall have knowledge of state and local government and shall have experience or training in the fields of taxation and accounting. The salary of the director must be set by the commissioner of university and school lands within the limits of legislative appropriations. The director may employ such other persons as may be necessary and may fix their compensation within the appropriation made for such purpose. The board of university and school lands shall fill any vacancy in the position of director in the same manner as listed above and, in addition, shall serve as an appeals board under rules promulgated by the board of university and school lands to reconsider grant applications for aid under this chapter which have been denied by the director. All action by the board of university and school lands, including appointment of a director, must be by majority vote.

**SECTION 10. AMENDMENT.** Section 57-62-05 of the North Dakota Century Code is amended and reenacted as follows:

**57-62-05. Powers and duties of energy ~~development~~infrastructure and impact office director.**

The energy ~~development~~infrastructure and impact office director shall:

1. Develop a plan for the assistance, through financial grants for services and facilities, of counties, cities, school districts, and other political subdivisions in coal development and oil and gas development impact areas.
2. Establish procedures and provide proper forms to political subdivisions for use in making application for funds for impact assistance as provided in this chapter.
3. Make grants disbursements to counties, cities, school districts, and other taxing districts for grants awarded by the board of university and school lands pursuant to chapter 15-01, as provided in this chapter and within the appropriations made for such purposes. In determining the amount of impact grants for which political subdivisions are eligible, the amount of revenue to which such political subdivisions will be entitled from taxes upon the real property of coal and oil and gas development plants and from other tax or fund distribution formulas provided by law must be considered.
4. Receive and review applications for impact assistance pursuant to this chapter.

5. Make recommendations, not less than once each calendar quarter, to the board of university and school lands on grants to counties, cities, school districts, and other political subdivisions in oil and gas development impact areas based on identified needs, and other sources of revenue available to the political subdivision.
6. Make recommendations to the board of university and school lands providing for the distribution of thirty-five percent of moneys available in the oil and gas impact fund to incorporated cities with a population of ten thousand or more, based on the most recent official decennial federal census, that are impacted by oil and gas development. The director may not recommend that an incorporated city receive more than sixty percent of the funds available under this subsection.
7. Make recommendations to the board of university and school lands providing for the distribution of sixty-five percent of moneys available in the oil and gas impact fund to cities not otherwise eligible for funding under this section, counties, school districts, and other political subdivisions impacted by oil and gas development.

**SECTION 11. AMENDMENT.** Section 57-62-06 of the North Dakota Century Code is amended and reenacted as follows:

**57-62-06. Legislative intent and guidelines on impact grants.**

The legislative assembly intends that the moneys appropriated to, and distributed by, the energy ~~development~~infrastructure and impact office for grants are to be used by grantees to meet initial impacts affecting basic governmental services, and directly necessitated by coal development and oil and gas development impact. As used in this section, "basic governmental services" do not include activities relating to marriage or guidance counseling, services or programs to alleviate other sociological impacts, or services or facilities to meet secondary impacts. All grant applications and presentations to the energy ~~development~~infrastructure and impact office must be made by an appointed or elected government official.

**SECTION 12. EMERGENCY.** Sections 5, 7, 8, 9, 10, and 11 of this Act are declared to be an emergency measure.

Approved April 19, 2011  
Filed April 19, 2011



## CHAPTER 14

### HOUSE BILL NO. 1014

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

AN ACT to provide an appropriation for defraying the expenses of the state industrial commission and the agencies under the management of the industrial commission; to provide legislative intent; to provide for a legislative management study; to provide an appropriation; to provide a contingent appropriation; to authorize transfers; 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 industrial commission and agencies under its control for the purpose of defraying the expenses of the state industrial commission and agencies under its control, for the biennium beginning July 1, 2011, and ending June 30, 2013, as follows:

##### Subdivision 1.

#### INDUSTRIAL COMMISSION

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$9,321,995	\$2,889,625	\$12,211,620
Operating expenses	2,646,426	847,318	3,493,744
Capital assets	49,000	(49,000)	0
Grants - Lignite research and development	19,971,300	0	19,971,300
Grants - Bond payments	27,441,865	(2,052,132)	25,389,733
Mineral resources contingency	0	743,972	743,972
Carbon dioxide storage facility administrative fund	0	532,000	532,000
Renewable energy development	0	1,500,000	1,500,000
Total all funds	\$59,430,586	\$4,411,783	\$63,842,369
Less estimated income	<u>49,308,484</u>	<u>(1,797,756)</u>	<u>47,510,728</u>
Total general fund	\$10,122,102	\$6,209,539	\$16,331,641
Full-time equivalent positions	61.06	13.00	74.06

##### Subdivision 2.

#### BANK OF NORTH DAKOTA - OPERATIONS

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Bank of North Dakota operations	\$41,762,274	\$3,824,881	\$45,587,155
Capital assets	<u>1,455,000</u>	<u>(189,000)</u>	<u>1,266,000</u>
Total special funds	\$43,217,274	\$3,635,881	\$46,853,155

Full-time equivalent positions	176.50	0.00	176.50
Subdivision 3.			

## BANK OF NORTH DAKOTA - ECONOMIC DEVELOPMENT

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Partnership in assisting community expansion fund	\$8,000,000	(\$2,000,000)	\$6,000,000
Agriculture partnership in assisting community expansion fund	1,400,000	(400,000)	1,000,000
Beginning farmer revolving loan fund	950,000	450,000	1,400,000
Biofuels partnership in assisting community expansion fund	<u>0</u>	<u>1,000,000</u>	<u>1,000,000</u>
Total all funds	\$10,350,000	(\$950,000)	\$9,400,000
Less beginning farmer revolving loan fund	<u>950,000</u>	<u>(950,000)</u>	<u>0</u>
Total general fund	\$9,400,000	\$0	\$9,400,000

Subdivision 4.

## MILL AND ELEVATOR ASSOCIATION

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$22,599,324	\$3,418,684	\$26,018,008
Operating expenses	16,982,918	3,460,951	20,443,869
Contingencies	325,000	75,000	400,000
Agriculture promotion	<u>150,000</u>	<u>60,000</u>	<u>210,000</u>
Total from mill and elevator fund	\$40,057,242	\$7,014,635	\$47,071,877
Full-time equivalent positions	131.00	0.00	131.00

Subdivision 5.

## HOUSING FINANCE AGENCY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$5,981,828	\$534,449	\$6,516,277
Operating expenses	8,677,581	(3,562,732)	5,114,849
Grants	26,224,360	634,560	26,858,920
Housing finance agency contingencies	<u>100,000</u>	<u>0</u>	<u>100,000</u>
Total special funds	\$40,983,769	(\$2,393,723)	\$38,590,046
Full-time equivalent positions	46.00	0.00	46.00

Subdivision 6.

## BILL TOTAL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$19,522,102	\$6,209,539	\$25,731,641
Grand total special funds	<u>174,516,769</u>	<u>5,509,037</u>	<u>180,025,806</u>
Grand total all funds	\$194,038,871	\$11,718,576	\$205,757,447

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-THIRD LEGISLATIVE ASSEMBLY.** The following amounts reflect the

one-time funding items approved by the sixty-first legislative assembly for the 2009-11 biennium and the 2011-13 one-time funding items included in the grand total appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2009-11</u>	<u>2011-13</u>
Federal stimulus funds	\$30,360,574	\$0
Biofuels partnership in assisting community expansion	700,000	0
State facility lignite feasibility demonstration project	400,000	0
Ag PACE disaster program	1,000,000	0
Recruitment/retention bonuses	185,000	0
Renewable energy development program	3,000,000	1,500,000
Temporary employees - Core library	0	90,000
Carbon dioxide storage facility administrative fund	0	532,000
Coalbed methane/shallow gas studies	31,152	25,000
Fracturing sand and proppant studies	62,000	50,000
Oil-bearing rock study	0	40,000
Paleontologic preparatory work	<u>0</u>	<u>62,400</u>
Total all funds	\$35,738,726	\$2,299,400
Total special funds	<u>30,360,574</u>	<u>0</u>
Total general fund	\$5,378,152	\$2,299,400

The 2011-13 one-time funding amounts are not a part of the entity's base budget for the 2013-15 biennium. The industrial commission shall report to the appropriations committees of the sixty-third legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 3. LEGISLATIVE INTENT - BOND PAYMENTS.** The amount of \$25,389,733 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, 2011, and ending June 30, 2013:

North Dakota university system	\$12,254,770
North Dakota university system - Energy conservation projects	929,789
Department of corrections and rehabilitation	1,337,752
Department of corrections and rehabilitation - Energy conservation projects	18,604
State department of health	672,898
Job service North Dakota	710,735
Adjutant general	70,225
Information technology department - ConnectND	5,406,666
Office of management and budget	665,143
Office of the attorney general	765,704
State historical society	1,392,069
Parks and recreation	73,613
Research and extension service	571,290
Veterans' home	<u>520,475</u>
Total	\$25,389,733

**SECTION 4. LEGISLATIVE INTENT - LAND PURCHASE.** It is the intent of the sixty-second legislative assembly that to the best of its ability the Bank of North Dakota ensure that properties adjacent to Bank of North Dakota property northwest of west street are developed for uses that are consistent with the mission and purpose of the Bank of North Dakota.

**SECTION 5. LEGISLATIVE MANAGEMENT STUDY.** During the 2011-12 interim, the legislative management shall consider studying primacy in the administration of federal environmental protection agency regulations.

**SECTION 6. APPROPRIATION.** In addition to the amount appropriated to the housing finance agency in subdivision 5 of section 1 of this Act, there is appropriated any additional income or unanticipated income from federal or other funds which may become available to the agency for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 7. APPROPRIATION - EMERGENCY COMMISSION APPROVAL.** In addition to the amount appropriated to the state industrial commission in subdivision 1 of section 1 of this Act, there is appropriated, with the approval of the emergency commission, funds that may become available to the commission from bonds authorized by law to be issued by the state industrial commission for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 8. CONTINGENT DEPARTMENT OF MINERAL RESOURCES FUNDING - PERMANENT OIL TAX TRUST FUND - EMERGENCY COMMISSION APPROVAL.** Of the funds appropriated in the mineral resources contingency line item in subdivision 1 of section 1 of this Act, \$743,972 is from the permanent oil tax trust fund. If funds are required due to the drilling rig count exceeding one hundred eighty for at least thirty consecutive days, the oil and gas division may spend up to \$192,393 of these funds and hire one full-time equivalent position, upon emergency commission approval, and further if funds are required due to the drilling rig count exceeding one hundred ninety for at least thirty consecutive days, the oil and gas division may spend up to an additional \$192,393 of these funds and hire one full-time equivalent position, upon emergency commission approval. If funds are required due to the total number of oil wells in the state exceeding nine thousand three hundred, the oil and gas division may spend up to \$359,186 and hire two full-time equivalent positions, upon emergency commission approval.

**SECTION 9. TRANSFER.** The sum of \$488,211, or so much of the sum as may be necessary, included in the special funds appropriation line item in subdivision 1 of section 1 of this Act, may be transferred from the entities within the control of the state industrial commission to the industrial commission fund for administrative services rendered by the commission. Transfers shall be made during the biennium beginning July 1, 2011, and ending June 30, 2013, upon order of the commission. Transfers from the student loan trust must be made to the extent permitted by sections 54-17-24 and 54-17-25.

**SECTION 10. APPROPRIATION - TRANSFER.** The funds appropriated in subdivision 3 of section 1 of this Act must be transferred by the Bank of North Dakota to the partnership in assisting community expansion fund; the agriculture partnership in assisting community expansion fund; the beginning farmer revolving loan fund; and the biofuels partnership in assisting community expansion fund. The Bank of North Dakota may not be construed to be a general fund agency because of the appropriation made by subsection 3 of section 1 of this Act.

**SECTION 11. LIGNITE RESEARCH, DEVELOPMENT, AND MARKETING PROGRAM - APPROPRIATION - LIGNITE MARKETING FEASIBILITY STUDY.** The amount of \$1,500,000, or so much of the amount as may be necessary, included in the grants and special funds appropriation line item in subdivision 1 of section 1 of this Act, is appropriated from the lignite research fund for the purpose of contracting for an independent, nonmatching lignite marketing feasibility study or studies that determine those focused priority areas where near-term, market-driven projects,

activities, or processes will generate matching private industry investment and have the most potential of preserving existing lignite production and industry jobs or that will lead to increased development of lignite and its products and create new lignite industry jobs and economic growth for the general welfare of this state. Moneys appropriated pursuant to this section may also be used for the purpose of contracting for nonmatching studies and activities in support of the lignite vision 21 program; for litigation that may be necessary to protect and promote the continued development of lignite resources; for nonmatching externality studies and activities in externality proceedings; or other marketing, environmental, or transmission activities that assist with marketing of lignite-based electricity and lignite-based byproducts. Moneys not needed for the purposes stated in this section are available to the commission for funding projects, processes, or activities under the lignite research, development, and marketing program.

**SECTION 12. LEGISLATIVE INTENT - CORE LIBRARY HOUSING.** It is the intent of the sixty-second legislative assembly that the industrial commission not construct a new building for the expansion for the core library. If the existing location of the core library does not have sufficient space, the industrial commission may relocate parts or all of the library to an existing state-owned facility.

**SECTION 13. CARBON DIOXIDE STORAGE FACILITY ADMINISTRATIVE FUND - USE OF FUNDING.** The carbon dioxide storage facility administrative fund line item in subdivision 1 of section 1 of this Act includes \$532,000 from the general fund that the industrial commission may deposit in its carbon dioxide storage facility administrative fund for the purpose of hiring one full-time equivalent position for up to three years until fee income is sufficient to provide funding for the administration of the provisions of chapter 38-22. The industrial commission shall use this funding to provide a timely response to the environmental protection agency's rules relating to carbon dioxide sequestration and develop a coordinated response from state agencies with the goal of the state of North Dakota having class VI primacy for carbon dioxide storage in North Dakota.

**SECTION 14. EMERGENCY.** Section 13 and the related funding included in subdivision 1 of section 1 of this Act are declared to be an emergency measure.

Approved May 9, 2011  
Filed May 9, 2011

## CHAPTER 15

### HOUSE BILL NO. 1015

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

AN ACT to provide an appropriation for defraying the expenses of the department of corrections and rehabilitation; to provide for a report to the budget section; to provide for borrowing authority; and to provide legislative intent.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the 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, 2011, and ending June 30, 2013, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Adult services	\$143,087,868	\$19,399,630	\$162,487,498
Youth services	<u>25,506,831</u>	<u>2,077,740</u>	<u>27,584,571</u>
Total all funds	\$168,594,699	\$21,477,370	\$190,072,069
Less estimated income	<u>25,937,693</u>	<u>4,568,457</u>	<u>30,506,150</u>
Total general fund	\$142,657,006	\$16,908,913	\$159,565,919
Full-time equivalent positions	735.29	59.00	794.29

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-THIRD LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-first legislative assembly for the 2009-11 biennium and the 2011-13 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2009-11</u>	<u>2011-13</u>
Deferred maintenance	\$1,372,519	\$0
Federal fiscal stimulus - 2009	1,039,856	0
Equipment	595,500	437,300
Capital projects	64,000,000	617,968
Extraordinary repairs	<u>0</u>	<u>741,490</u>
Total all funds	\$67,007,875	\$1,796,758
Less estimated income	<u>45,574,052</u>	<u>0</u>
Total general fund	\$21,433,823	\$1,796,758

The 2011-13 one-time funding amounts are not a part of the entity's base budget for the 2013-15 biennium. The department of corrections and rehabilitation shall report to the appropriations committees of the sixty-third legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 3. BORROWING AUTHORITY - BANK OF NORTH DAKOTA - APPROPRIATION.** The department of corrections and rehabilitation may borrow the

sum of \$1,100,000, or so much of the sum as may be necessary, from the Bank of North Dakota, which is appropriated to the department of corrections and rehabilitation for the purpose of defraying the expenses of the penitentiary expansion project, for the period beginning July 1, 2011, and ending June 30, 2013.

**SECTION 4. DEPARTMENT OF CORRECTIONS AND REHABILITATION - HOUSING CONTRACT.** The department of corrections and rehabilitation shall contract with an organization to house women inmates sentenced to the department for the biennium beginning July 1, 2011, and ending June 30, 2013. At the conclusion of the 2011-13 biennium, if the agreed-upon contract amount differs from the actual expenditures of the organization for the biennium beginning July 1, 2011, and ending June 30, 2013, the variance must be disclosed and reported to the department of corrections and rehabilitation.

**SECTION 5. REPORT TO BUDGET SECTION.** The department of corrections and rehabilitation shall, during the 2011-12 interim, report quarterly to the budget section regarding the progress of the prison expansion project. Reports to the budget section must include any amounts borrowed under the provisions of section 3 of this Act and the purpose of the loan.

**SECTION 6. LEGISLATIVE INTENT - NEW FULL-TIME EQUIVALENT POSITIONS.** It is the intent of the sixty-second legislative assembly that the department of corrections and rehabilitation not fill any of the forty-seven new full-time equivalent positions for the state penitentiary expansion project prior to ninety days before the estimated completion date of the project.

Approved May 9, 2011  
Filed May 9, 2011

## CHAPTER 16

### HOUSE BILL NO. 1016

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

AN ACT to provide an appropriation for defraying the expenses of job service North Dakota; and to amend and reenact subsection 3 of section 52-02.1-01 and section 52-08-10 of the North Dakota Century Code, relating to the new jobs training program and workforce training program.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are 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, 2011, and ending June 30, 2013, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$35,566,246	(\$295,662)	\$35,270,584
Operating expenses	11,224,804	2,473,866	13,698,670
Capital assets	20,000	0	20,000
Grants	8,438,220	(861,936)	7,576,284
Workforce 20/20	1,512,491	18,669	1,531,160
Reed Act - Unemployment insurance computer modernization	5,515,586	6,884,414	12,400,000
Federal stimulus funds	<u>0</u>	<u>1,500,000</u>	<u>1,500,000</u>
Total all funds	\$62,277,347	\$9,719,351	\$71,996,698
Less estimated income	<u>60,711,905</u>	<u>9,404,901</u>	<u>70,116,806</u>
Total general fund	\$1,565,442	\$314,450	\$1,879,892
Full-time equivalent positions	284.05	(22.29)	261.76

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-THIRD LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-first legislative assembly for the 2009-11 biennium and the 2011-13 one-time funding items included in the appropriation of section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2009-11</u>	<u>2011-13</u>
Federal stimulus funds	<u>\$9,092,939</u>	<u>\$1,500,000</u>
Total special funds	\$9,092,939	\$1,500,000

The 2011-13 one-time funding amounts are not part of the entity's base budget for the 2013-15 biennium. Job service North Dakota shall report to the appropriations committees of the sixty-third legislative assembly on the use of the one-time funding for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 3. APPROPRIATION - REED ACT FUNDS - UNEMPLOYMENT INSURANCE COMPUTER MODERNIZATION.** The special appropriation of



\$12,400,000 in section 1 of this Act is from federal Reed Act funds made available to the state by the federal Reed Act distributions made in federal fiscal years 1957, 1958, 1999, and 2002, pursuant to section 903 of the Social Security Act. This sum, or so much of the sum as may be necessary, is for the purpose of developing a modernized insurance computer system, for the biennium beginning July 1, 2011, and ending June 30, 2013.

**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 for the biennium beginning July 1, 2011, and ending June 30, 2013.

<sup>3</sup> **SECTION 5. AMENDMENT.** Subsection 3 of section 52-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Community" means the city or county in which an eligible primary sector business is or will be located or a local development corporation, community organization, institution of higher education that is assigned primary responsibility for workforce training under section 52-08-08, or any other group the interest of which is in the economic growth of the area.

<sup>4</sup> **SECTION 6. AMENDMENT.** Section 52-08-10 of the North Dakota Century Code is amended and reenacted as follows:

**52-08-10. Preparation of business plan - Revolving loans.**

Subject to state board of higher education policies, the president of an institution of higher education that is assigned primary responsibility for workforce training shall prepare an annual business plan that must include provisions for use of the training capacity of the tribal colleges within the designated region, in consultation with the workforce training board. The business plan may include preparation as a community under the new jobs training program under chapter 52-02.1. The workforce training board shall approve the business plan and make recommendations for funding of the business plan to the state board of higher education. Any state funds received under this program by the institutions of higher education assigned primary responsibility for workforce training must be used for business and customized training activities. The state board of higher education may establish for each institution of higher education assigned primary responsibility for workforce training a revolving loan fund for workforce training program startups using the borrowing authority provided in section 15-10-16.1.

Approved May 9, 2011  
Filed May 9, 2011

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<sup>3</sup> Section 52-02.1-01 was also amended by section 1 of Senate Bill No. 2056, chapter 376.

<sup>4</sup> Section 52-08-10 was also amended by section 2 of Senate Bill No. 2056, chapter 376.

## CHAPTER 17

### HOUSE BILL NO. 1017

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

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

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated from special funds derived from 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, 2011, and ending June 30, 2013, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$906,595	\$71,587	\$978,182
Operating expenses	<u>592,117</u>	<u>256,900</u>	<u>849,017</u>
Total special funds	\$1,498,712	\$328,487	\$1,827,199
Full-time equivalent positions	5.00	0.00	5.00

Approved April 11, 2011  
Filed April 11, 2011

## CHAPTER 18

### HOUSE BILL NO. 1019

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

AN ACT to provide an appropriation for defraying the expenses of the state board for career and technical education.

#### 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, 2011, and ending June 30, 2013, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$4,170,030	\$192,944	\$4,362,974
Operating expenses	1,226,606	26,733	1,253,339
Grants	27,200,000	1,825,000	29,025,000
Grants - Postsecondary	357,452	0	357,452
Adult farm management	749,802	0	749,802
Workforce training	<u>3,000,000</u>	<u>0</u>	<u>3,000,000</u>
Total all funds	\$36,703,890	\$2,044,677	\$38,748,567
Less estimated income	<u>10,762,882</u>	<u>4,006</u>	<u>10,766,888</u>
Total general fund appropriation	\$25,941,008	\$2,040,671	\$27,981,679
Full-time equivalent positions	28.50	(1.00)	27.50

Approved May 9, 2011  
Filed May 9, 2011

## CHAPTER 19

### HOUSE BILL NO. 1020

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

AN ACT to provide an appropriation for defraying the expenses of the extension service, northern crops institute, upper great plains transportation institute, main research center, branch research centers, and agronomy seed farm; to amend and reenact section 4-14.2-02 of the North Dakota Century Code, relating to the northern crops council; to provide for transfers; to provide contingent funding; 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, 2011, and ending June 30, 2013, as follows:

##### Subdivision 1.

#### NORTH DAKOTA STATE UNIVERSITY EXTENSION SERVICE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Extension service	\$47,091,489	(\$64,835)	\$47,026,654
Soil conservation committee	837,800	150,000	987,800
Total all funds	\$47,929,289	\$85,165	\$48,014,454
Less estimated income	<u>25,928,877</u>	<u>(2,800,067)</u>	<u>23,128,810</u>
Total general fund	\$22,000,412	\$2,885,232	\$24,885,644
Full-time equivalent positions	255.75	1.00	256.75

##### Subdivision 2.

#### NORTHERN CROPS INSTITUTE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Total all funds	\$3,037,486	\$309,821	\$3,347,307
Less estimated income	<u>1,598,265</u>	<u>56,460</u>	<u>1,654,725</u>
Total general fund	\$1,439,221	\$253,361	\$1,692,582
Full-time equivalent positions	11.00	0.00	11.00

## Subdivision 3.

## UPPER GREAT PLAINS TRANSPORTATION INSTITUTE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Total all funds	\$23,326,992	\$742,969	\$24,069,961
Less estimated income	<u>21,737,199</u>	413,134	<u>22,150,333</u>
Total general fund	<u>\$1,589,793</u>	\$329,835	\$1,919,628
Full-time equivalent positions	52.30	0.00	52.30

## Subdivision 4.

## MAIN RESEARCH CENTER

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Main research center	\$87,530,418	\$11,059,555	\$98,589,973
Deferred maintenance	0	0	0
Grape and wine program committee	0	0	0
Federal fiscal stimulus 2009	<u>0</u>	<u>0</u>	<u>0</u>
Total all funds	\$87,530,418	\$11,059,555	\$98,589,973
Less estimated income	<u>45,013,267</u>	<u>(879,692)</u>	<u>44,133,575</u>
Total general fund	<u>\$42,517,151</u>	\$11,939,247	\$54,456,398
Full-time equivalent positions	329.26	4.00	333.26

## Subdivision 5.

## RESEARCH CENTERS

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Dickinson research center	\$5,012,580	\$1,375,982	\$6,388,562
Central grasslands research center	2,560,602	305,245	2,865,847
Hettinger research center	2,995,155	378,020	3,373,175
Langdon research center	2,091,572	287,235	2,378,807
North central research center	3,973,952	425,869	4,399,821
Williston research center	2,922,183	487,906	3,410,089
Carrington research center	<u>6,727,962</u>	<u>398,526</u>	<u>7,126,488</u>
Total all funds	\$26,284,006	\$3,658,783	\$29,942,789
Less estimated income	<u>13,916,816</u>	<u>1,880,765</u>	<u>15,797,581</u>
Total general fund	<u>\$12,367,190</u>	\$1,778,018	\$14,145,208
Full-time equivalent positions	95.49	2.00	97.49

## Subdivision 6.

## AGRONOMY SEED FARM

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Agronomy seed farm	<u>\$1,275,238</u>	<u>\$159,930</u>	<u>\$1,435,168</u>
Total special funds	\$1,275,238	\$159,930	\$1,435,168
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>
Grand total general fund	\$79,913,767	\$17,185,693	\$97,099,460
Grand total special funds	<u>109,469,662</u>	<u>(1,169,470)</u>	<u>108,300,192</u>
Grand total all funds	\$189,383,429	\$16,016,223	\$205,399,652

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-THIRD LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-first legislative assembly for the 2009-11 biennium and the 2011-13 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2009-11</u>	<u>2011-13</u>
Main research center greenhouse project	\$11,450,400	\$9,494,581
Deferred maintenance pool	450,000	0
Operating pool	925,000	0
Dickinson parking lot and landscaping capital project	350,000	0
Upper great plains transportation institute center for transportation study capital project	3,000,000	0
Beef research facility	2,612,400	0
Grape and wine program committee	250,000	0
Federal fiscal stimulus 2009	700,000	0
North central, Williston, Langdon, and Dickinson renovations/additions	<u>2,937,200</u>	<u>0</u>
Total all funds	\$22,675,000	\$9,494,581
Total other funds	<u>4,975,000</u>	<u>2,502,931</u>
Total general fund	\$17,700,000	\$6,991,650

The 2011-13 one-time funding amounts are not a part of the entity's base budget for the 2013-15 biennium. The main research center shall report to the appropriations committees of the sixty-third legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 3. CONTINGENT FUNDING - WILLISTON RESEARCH CENTER DIRECTOR.** Of the funds appropriated to the Williston research center in subdivision 5 of section 1 of this Act, \$210,000 from the general fund is contingent and subject to the provisions of this section. If funding for fifty percent of the 2011-13 biennium costs relating to the director position at the Williston research center is not provided by the Montana state university eastern agricultural research center, the Williston research center may spend up to \$210,000 and hire one full-time equivalent director position for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 4. ADDITIONAL INCOME - APPROPRIATION.** In addition to the amount included in the grand total special funds appropriation line item in section 1 of this Act, any other income, including funds from federal acts, private grants, gifts, and donations, or from other sources received by the North Dakota state university extension service, the northern crops institute, the upper great plains transportation institute, the main research center, branch research centers, and agronomy seed farm, except as otherwise provided by law, is appropriated for the purpose designated in the act, grant, gift, or donation, for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 5. TRANSFER AUTHORITY.** Upon approval of the state board of agricultural research and education and appropriate branch research center directors, the director of the main research center may transfer appropriation authority within subdivisions 1, 2, 4, and 5 of section 1 of this Act. Any amounts transferred must be reported to the director of the office of management and budget.

**SECTION 6. FULL-TIME EQUIVALENT POSITION ADJUSTMENTS.** The 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. The board shall report any adjustments to the office of management and budget prior to the submission of the 2013-15 budget request.

**SECTION 7. 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, 2013, and ending June 30, 2015.

**SECTION 8. PERMANENT OIL TAX TRUST FUND - DICKINSON RESEARCH CENTER - OPERATING POOL FUNDING.** The estimated income line item in subdivision 5 of section 1 of this Act includes \$800,000 from the permanent oil tax trust fund. This funding is available only for defraying the costs of operations of the Dickinson research center, for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 9. AMENDMENT.** Section 4-14.2-02 of the North Dakota Century Code is amended and reenacted as follows:

**4-14.2-02. Northern crops council - Establishment - Chairman - Meetings - Compensation.**

1. The northern crops council is established. The council shall establish policies for the operation of the northern crops institute. The council consists of:
  - a. The president of North Dakota state university of agriculture and applied science or the president's designee.
  - b. A representative selected by the North Dakota wheat commission.
  - c. A representative selected by the North Dakota oilseed council.
  - d. A representative selected by the North Dakota barley council.
  - e. A representative selected by the North Dakota soybean council.
  - f. The agriculture commissioner or the commissioner's designee.
  - g. Five to seven producers of northern crops selected by the members designated in subdivisions a through f.
  - h. Up to four representatives of industries that process northern crops selected by the members designated in subdivisions a through f.
2. a. The term of office for each member of the council, except the president of North Dakota state university of agriculture and applied science and the

agriculture commissioner, is three years, and those members are limited to two 3-year terms. Each term of office begins with the first reorganizational meeting after the date of appointment.

b. Notwithstanding subdivision a, during the 2011-13 biennium, the council shall:

(1) Stagger by lot the terms of the producers of northern crops so that no more than one of the producers' terms expires in June 2013; and

(2) Stagger by lot the terms of the representatives of industries that process northern crops so that no more than one of the representatives' terms expires in June 2013.

3. The chairman of the council must be a member of the council elected annually by a majority vote of the council. Provided, the members designated in subdivisions a and f of subsection 1 are not eligible to serve as chairman.
4. The council shall meet at least three times annually at such times and places as must be determined by the council and may meet in special meeting upon such call and notice as may be prescribed by rules adopted by the council. A council member unable to attend a meeting of the council may be represented by a person who has a written proxy from the member.

**SECTION 10. EXEMPTION.** The amounts appropriated for the research greenhouse complex project, as contained in subdivision 4, section 3, of chapter 48 of the 2005 Session Laws, and the branch center renovations and research greenhouse complex projects, as contained in subdivision 4, section 1, of chapter 48 of the 2009 Session Laws, are not subject to the provisions of section 54-44.1-11, and any unexpended funds from these appropriations or related revenues are available and may be expended during the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 11. EMERGENCY.** The appropriation for capital projects of \$6,991,650 from the general fund and \$2,502,931 from special funds in subdivision 4 of section 1 of this Act is declared to be an emergency measure.

Approved May 5, 2011  
Filed May 5, 2011



## CHAPTER 20

### HOUSE BILL NO. 1021

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

AN ACT to provide an appropriation for defraying the expenses of the information technology department; to provide for various transfers; and to amend and reenact section 7 of chapter 49 and section 8 of chapter 519 of the 2009 Session Laws, relating to statewide longitudinal data system expenditures and health information technology.

**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 that agency, for the biennium beginning July 1, 2011, and ending June 30, 2013, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$42,564,943	\$3,038,443	\$45,603,386
Operating expenses	55,208,550	(2,056,359)	53,152,191
Capital assets	11,970,746	3,064,920	15,035,666
Center for distance education	6,187,917	461,321	6,649,238
Deferred maintenance	60,000	(60,000)	0
Statewide longitudinal data system	202,442	3,424,425	3,626,867
Educational technology council	974,986	100,417	1,075,403
EduTech	7,400,002	526,445	7,926,447
K-12 wide area network	4,776,970	299,022	5,075,992
Geographic information system	789,678	322,387	1,112,065
Health information technology office	8,350,000	5,609,238	13,959,238
Criminal justice information sharing	3,339,491	(358,097)	2,981,394
Federal stimulus funds	<u>80,000,000</u>	<u>(72,000,000)</u>	<u>8,000,000</u>
Total all funds	\$221,825,725	(\$57,627,838)	\$164,197,887
Less estimated income	<u>206,907,171</u>	<u>(61,830,488)</u>	<u>145,076,683</u>
Total general fund	\$14,918,554	\$4,202,650	\$19,121,204
Full-time equivalent positions	328.20	(1.90)	326.30

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-THIRD LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-first legislative assembly for the 2009-11 biennium and the 2011-13 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2009-11</u>	<u>2011-13</u>
Criminal justice information sharing projects	\$269,748	\$200,000
K-12 wide area network	1,200,000	0
K-12 PowerSchool	353,600	0
Center for distance education	100,000	0

Statewide longitudinal database system	2,263,883	1,757,624
Federal fiscal stimulus	<u>2,263,883</u>	<u>8,000,000</u>
Total all funds	\$6,451,114	\$9,957,624
Less estimated income	<u>2,263,883</u>	<u>8,000,000</u>
Total general fund	\$4,187,231	\$1,957,624

The 2011-13 one-time funding amounts are not a part of the entity's base budget for the 2013-15 biennium. The information technology department shall report to the appropriations committees of the sixty-third legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 3. TRANSFERS.** Notwithstanding section 54-16-04, the director of the office of management and budget shall make transfers of funds between the salaries and wages, operating expenses, and capital assets line items in section 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 projects.

**SECTION 4. BANK OF NORTH DAKOTA TRANSFER.** The industrial commission shall transfer, as requested by the health information technology office director, up to \$5,000,000 from the current earnings and accumulated profits of the Bank of North Dakota to the health information technology planning loan fund or to the health information technology loan fund, for the biennium beginning July 1, 2011, and ending June 30, 2013. The health information technology office director shall request transfers from the Bank only as necessary to meet cashflow needs of the fund and only upon certification by the health information technology office director of a demonstrated need for health information technology planning loans.

**SECTION 5. AMENDMENT.** Section 7 of chapter 49 of the 2009 Session Laws is amended and reenacted as follows:

**SECTION 7. DEPARTMENT OF PUBLIC INSTRUCTION - STATEWIDE LONGITUDINAL DATA SYSTEM EXPENDITURES - APPROVAL.** The department of public instruction may spend only the federal funds appropriated in House Bill No. 1013 for costs associated with the statewide longitudinal data system upon approval of the expenditures by the information technology department, for the biennium beginning July 1, ~~2009~~2011, and ending June 30, ~~2011~~2013.

**SECTION 6. AMENDMENT.** Section 8 of chapter 519 of the 2009 Session Laws is amended and reenacted as follows:

**SECTION 8. BANK OF NORTH DAKOTA TRANSFERS.** The industrial commission shall transfer, during the period beginning with the effective date of this Act and ending June 30, ~~2011~~2013, as requested by the health information technology office director, up to \$8,000,000 from the current earnings and the accumulated undivided profits of the Bank of North Dakota to the health information technology loan fund to meet any required match for federal funds or to the electronic health information exchange fund to meet any required match for federal funds or for ongoing operating expenditures of the health information exchange or as directed, a portion to both funds to meet any required match for federal funds. ~~The health information technology office director shall request fund transfers from the Bank only as necessary to comply with federal requirements and to meet cash flow needs of the funds.~~

Approved May 9, 2011  
Filed May 9, 2011

**CHAPTER 21**

**HOUSE BILL NO. 1022**

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

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

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated from special funds derived from federal funds and other income, to the state seed department for the purpose of defraying the expenses of the state seed department, for the biennium beginning July 1, 2011, and ending June 30, 2013, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Total special funds	\$6,805,495	\$88,516	\$6,894,011
Full-time equivalent positions	30.00	0.00	30.00

Approved April 8, 2011  
 Filed April 11, 2011

## CHAPTER 22

### HOUSE BILL NO. 1023

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

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, 2011, and ending June 30, 2013, as follows:

<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>	
Commission on legal counsel for indigents	\$11,420,365	\$358,917	\$11,779,282
Less special funds	<u>1,950,217</u>	<u>20,635</u>	<u>1,970,852</u>
Total general fund	\$9,470,148	\$338,282	\$9,808,430
Full-time equivalent positions	30.00	0.00	30.00

Approved April 8, 2011

Filed April 11, 2011

## CHAPTER 23

### HOUSE BILL NO. 1024

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

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 that agency, for the biennium beginning July 1, 2011, and ending June 30, 2013, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Racing commission	\$325,000	\$122,501	\$447,501
Less estimated income	<u>30,000</u>	<u>100,000</u>	<u>130,000</u>
Total general fund	\$295,000	\$22,501	\$317,501
Full-time equivalent positions	2.00	0.00	2.00

Approved April 11, 2011  
Filed April 11, 2011

## CHAPTER 24

### HOUSE BILL NO. 1025

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

AN ACT to provide an appropriation for defraying the expenses of the comprehensive tobacco control advisory committee; and to provide for reports.

#### 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 tobacco prevention and control trust fund, not otherwise appropriated, to the comprehensive tobacco control advisory committee for the purpose of defraying the expenses of the committee, for the biennium beginning July 1, 2011, and ending June 30, 2013, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Comprehensive tobacco control	\$12,882,000	\$40,614	\$12,922,614
Total special funds	\$12,882,000	\$40,614	\$12,922,614
Full-time equivalent positions	4.00	1.00	5.00

**SECTION 2. REPORTS TO THE BUDGET SECTION.** The tobacco prevention and control executive committee shall provide written reports to the budget section quarterly during the 2011-12 interim. The reports must include detailed information on expenditures for contract services, professional fees and services, and grants.

Approved May 5, 2011  
Filed May 5, 2011

## CHAPTER 25

### HOUSE BILL NO. 1177

(Representatives DeKrey, Boehning, Owens, Metcalf)  
(Senator Miller)

AN ACT to provide an appropriation to the department of veterans' affairs for stand down events.

#### **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 \$20,000, or so much of the sum as may be necessary, to the department of veterans' affairs for the purpose of holding "stand down" events to coordinate benefits and provide services to needy veterans in this state, for the biennium beginning July 1, 2011, and ending June 30, 2013. This amount is one-time funding and is not a part of the agency's base budget for the 2013-15 biennium. The department of veterans' affairs shall report to the appropriations committees of the sixty-third legislative assembly on the use of this one-time funding. The department of veterans' affairs may only provide funding for a "stand down" event to the extent private matching funds are used to provide a dollar-for-dollar or in-kind match. The department of veterans' affairs may not spend more than five thousand dollars for a single "stand down" event.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 26

### HOUSE BILL NO. 1343

(Representatives Carlson, Hofstad, Kempenich, Nathe, Steiner, Wieland)

AN ACT to provide an appropriation for defraying the expenses of the industrial commission; and to declare an emergency.

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

**SECTION 1. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$150,000, or so much of the sum as may be necessary, to the industrial commission for the purpose of defraying salaries and related operating expenses relating to its oil and gas industry regulatory responsibilities, for the period beginning with the effective date of this Act and ending June 30, 2011. The industrial commission is authorized four full-time equivalent positions.

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

Approved April 8, 2011  
Filed April 11, 2011



## CHAPTER 27

### SENATE BILL NO. 2001

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

AN ACT to provide an appropriation for defraying the expenses of the office of the governor; to amend and reenact sections 54-07-04 and 54-08-03 of the North Dakota Century Code, relating to the salaries of the governor and lieutenant governor; 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 governor for the purpose of defraying the expenses of the office of the governor, for the biennium beginning July 1, 2011, and ending June 30, 2013, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$2,999,771	\$278,715	\$3,278,486
Operating expenses	426,787	(17,131)	409,656
Contingencies	10,000	0	10,000
Transition in	0	15,000	15,000
Transition out	0	50,000	50,000
Roughrider awards	10,800	0	10,800
Education jobs fund program	0	<u>21,517,716</u>	<u>21,517,716</u>
Total all funds	\$3,447,358	\$21,844,300	\$25,291,658
Less estimated income	0	<u>21,517,716</u>	<u>21,517,716</u>
Total general fund	\$3,447,358	\$326,584	\$3,773,942
Full-time equivalent positions	18.00	0.00	18.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-THIRD LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-first legislative assembly for the 2009-11 biennium and the 2011-13 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2009-11</u>	<u>2011-13</u>
Federal stimulus funds - 2009	\$104,699,679	\$0
Governor's transition lines	0	65,000
Education jobs fund	0	<u>21,517,716</u>
Total all funds	\$104,699,679	\$21,582,716
Total estimated income	<u>104,699,679</u>	<u>21,517,716</u>
Total general fund	\$0	\$65,000

The 2011-13 one-time funding amounts are not a part of the entity's base budget for the 2013-15 biennium. The governor's office shall report to the appropriations committees of the sixty-third legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 3. ONE-TIME FUNDING - EDUCATION JOBS FUNDS - DEPARTMENT OF PUBLIC INSTRUCTION.** The federal education jobs funding of \$21,517,716 appropriated to the department of public instruction in Senate Bill No. 2013 is one-time funding for the 2011-13 biennium. The department of public instruction may not request funding from the general fund to replace this one-time funding in its base budget request for the 2013-15 biennium.

**SECTION 4. APPROPRIATION - GOVERNOR'S OFFICE.** In addition to the amounts appropriated to the governor's office in section 1 of this Act, there is appropriated any additional income from federal or other funds which may become available to the agency for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 5. 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 ~~thirteen~~ thirteen thousand and ~~thirty-four~~ thirty-four hundred ~~ninety-four~~ ninety-four dollars through June 30, ~~2010~~ 2012, and one hundred ~~seventeen~~ seventeen thousand ~~two hundred eighty-five~~ two hundred eighty-five dollars thereafter.

**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 ~~eighty-one~~ eighty-eight thousand ~~five~~ one hundred ~~thirty-eight~~ thirty-eight ~~three~~ three dollars through June 30, ~~2010~~ 2012, and ~~eighty-five~~ eighty-five thousand ~~six~~ six hundred ~~fifteen~~ twenty-nine dollars thereafter.

**SECTION 7. EMERGENCY.** The education jobs fund program line item in section 1 of this Act is declared to be an emergency measure.

Approved May 5, 2011  
Filed May 5, 2011

## CHAPTER 28

### SENATE BILL NO. 2002

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

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

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are 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, 2011, and ending June 30, 2013, as follows:

Subdivision 1.

#### SECRETARY OF STATE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$3,129,509	\$293,834	\$3,423,343
Operating expenses	2,372,950	3,792,039	6,164,989
Petition review	8,000	0	8,000
Election reform	8,344,107	(2,137,295)	6,206,812
Bank of North Dakota loan	<u>3,400,698</u>	<u>(3,400,698)</u>	<u>0</u>
Total all funds	\$17,255,264	(\$1,452,120)	\$15,803,144
Less estimated income	<u>12,315,676</u>	<u>(5,528,692)</u>	<u>6,786,984</u>
Total general fund	\$4,939,588	\$4,076,572	\$9,016,160
Full-time equivalent positions	28.00	0.00	28.00

Subdivision 2.

#### SECRETARY OF STATE - PUBLIC PRINTING

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operating expenses	<u>\$337,000</u>	<u>(\$27,000)</u>	<u>\$310,000</u>
Total general fund	\$337,000	(\$27,000)	\$310,000

Subdivision 3.

#### BILL TOTAL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$5,276,588	\$4,049,572	\$9,326,160

Grand total special funds	<u>12,315,676</u>	<u>(5,528,692)</u>	<u>6,786,984</u>
Grand total all funds	\$17,592,264	(\$1,479,120)	\$16,113,144

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-THIRD LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-first legislative assembly for the 2009-11 biennium and the 2011-13 one-time funding items included in the appropriation of section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2009-11</u>	<u>2011-13</u>
Mainframe migration computer project	\$780,000	\$3,500,000
Federal matching funds	30,000	0
Transfer to election fund	25,000	0
Online public meeting system	<u>0</u>	<u>43,039</u>
Total general fund	\$835,000	\$3,543,039

The 2011-13 one-time funding amounts are not part of the entity's base budget for the 2013-15 biennium. The secretary of state shall report to the appropriations committees of the sixty-third legislative assembly on the use of the one-time funding for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 3. MAINFRAME MIGRATION COMPUTER PROJECT - FUNDING LIMITATION.** One-time funding of \$3,500,000 from the general fund for the mainframe migration computer project included in the operating expenses line item of subdivision 1 of section 1 of this Act may not be used for any other purpose and the appropriation authority must be canceled on June 30, 2013, in accordance with provisions of section 54-44.1-11.

**SECTION 4. EXEMPTION - GENERAL SERVICES OPERATING FUND.** Any unexpended and unobligated balance remaining in the secretary of state's general services operating fund on June 30, 2011, is not subject to the provisions of section 54-09-08, and any unexpended funds are available and may be expended by the secretary of state, during the biennium beginning July 1, 2011, and ending June 30, 2013, for the database and processing platform migration project.

**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 ~~eighty three~~ eighty three thousand ~~five~~ five hundred ~~fifty six~~ seventy one dollars through June 30, ~~2010~~ 2012, and ~~eighty seven~~ eighty seven thousand ~~seven hundred twenty eight~~ seventy one dollars thereafter.

Approved May 5, 2011  
Filed May 5, 2011

## CHAPTER 29

### SENATE BILL NO. 2003

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

AN ACT to provide an appropriation for defraying the expenses of the attorney general; to create and enact two new sections to chapter 18-01 of the North Dakota Century Code, relating to fire and tornado fund fees and petroleum release compensation fund fees; to amend and reenact sections 12-60-25, 54-12-11, and 57-43.1-03.2 of the North Dakota Century Code, relating to missing children, the salary of the attorney general, and refunds of tax for fuel purchased by native Americans; to provide an exemption; to provide 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 attorney general for the purpose of defraying the expenses of the attorney general, for the biennium beginning July 1, 2011, and ending June 30, 2013, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$25,958,281	\$3,547,765	\$29,506,046
Operating expenses	14,750,431	1,667,585	16,418,016
Capital assets	2,391,187	(135,004)	2,256,183
Grants	3,452,225	(32,225)	3,420,000
Litigation fees	50,000	0	50,000
Medical examinations	660,000	0	660,000
North Dakota lottery	3,584,388	115,854	3,700,242
Arrest and return of fugitives	10,000	0	10,000
Gaming commission	6,141	1,227	7,368
Federal stimulus funds	<u>0</u>	<u>2,355,708</u>	<u>2,355,708</u>
Total all funds	\$50,862,653	\$7,520,910	\$58,383,563
Less estimated income	<u>22,802,221</u>	<u>4,039,097</u>	<u>26,841,318</u>
Total general fund	\$28,060,432	\$3,481,813	\$31,542,245
Full-time equivalent positions	202.50	0.00	202.50

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-THIRD LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-first legislative assembly for the 2009-11 biennium and the 2011-13 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2009-11</u>	<u>2011-13</u>
Federal stimulus funds	\$2,259,188	\$2,355,708
Crime lab equipment and BCI vehicles	<u>0</u>	<u>312,400</u>
Total all funds	\$2,259,188	\$2,668,108
Total special funds	<u>2,259,188</u>	<u>2,355,708</u>
Total general fund	\$0	\$312,400

The 2011-13 one-time funding amounts are not a part of the entity's base budget for the 2013-15 biennium. The attorney general shall report to the appropriations committees of the sixty-third legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 3. ESTIMATED INCOME - GAMING AND EXCISE TAX ALLOCATION FUND - LOCAL GAMING ENFORCEMENT GRANTS.** The grants line item in section 1 of this Act includes \$510,000 for local gaming enforcement grants.

**SECTION 4. AMENDMENT.** Section 12-60-25 of the North Dakota Century Code is amended and reenacted as follows:

**12-60-25. Lost, missing, or runaway children.**

The bureau shall:

1. ~~Establish and maintain a statewide file system for the purpose of effecting an immediate law enforcement response to reports of lost, missing, or runaway children.~~
2. Implement a data exchange system to compile, to maintain, and to make available for dissemination to North Dakota and to out-of-state law enforcement agencies, descriptive information that can assist appropriate agencies in recovering lost, missing, or runaway children through the national crime information center.
- ~~3-2.~~ Establish contacts and exchange information regarding lost, missing, or runaway children with the national crime information center.
- ~~4-3.~~ Notify all enforcement agencies that reports of lost, missing, or runaway children must be entered as soon as the minimum level of data specified by the bureau is available to the reporting agency and that no waiting period for entry of such data exists. If the enforcement agency is unable to enter the data, the bureau immediately upon notification shall enter the information into the national crime information center file.
- ~~5-4.~~ Compile and retain information regarding lost, missing, or runaway children ~~in a separate file,~~ in a manner that allows the information to be used by law enforcement and other agencies, considered appropriate by the bureau, for investigative purposes. The reporting law enforcement agency is responsible for maintaining the disposition of the case ~~and periodically shall review the case with the reporting party and the bureau to ensure all available information is included and to determine the current status of the case.~~
- ~~6-5.~~ Provide prompt confirmation of the receipt and entry of lost, missing, or runaway children reports ~~into the file system~~ to the enforcement agency providing the report or to the parent, guardian, or identified family member as provided in subsection ~~7-6.~~
- ~~7-6.~~ Allow any parent, guardian, or identified family member to submit a lost, missing, or runaway child report to the bureau which will be ~~included in the bureau file system and~~ transmitted to the national crime information center, if they are unable to receive services from the local law enforcement agency.
- ~~8-7.~~ Compile and maintain a historical data repository/information relating to lost, missing, or runaway children for all of the following purposes:

- a. To develop and improve techniques utilized by law enforcement agencies when responding to reports of lost, missing, or runaway children.
- b. To provide a factual and statistical base for research which would address the problem of lost, missing, or runaway children.

**SECTION 5.** A new section to chapter 18-01 of the North Dakota Century Code is created and enacted as follows:

**Fire and tornado fund fees.**

The attorney general shall charge and collect fees for services provided by the state fire marshal program to entities covered by the fire and tornado fund under chapter 26.1-22. All fees collected under this section must be deposited in the attorney general's operating fund.

**SECTION 6.** A new section to chapter 18-01 of the North Dakota Century Code is created and enacted as follows:

**Petroleum release compensation fund fees.**

The attorney general shall charge and collect fees for services provided by the state fire marshal program to entities covered by the petroleum release compensation fund under chapter 23-37. All fees collected under this section must be deposited in the attorney general's operating fund.

**SECTION 7. 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 ~~ninety-one hundred thirty-four thousand seven hundred ninety-three~~ ninety-one hundred thirty-four thousand ~~seven hundred ninety-three~~ thirty-five dollars through June 30, ~~2010~~ 2012, ~~ninety-six thousand three hundred four dollars through December 31, 2010, one hundred thirteen thousand two hundred sixty-six dollars through June 30, 2011, and one hundred thirty-eight thousand two hundred twenty-eight~~ thirty-eight thousand ~~two hundred twenty-eight~~ thirty-nine dollars thereafter.

**SECTION 8. AMENDMENT.** Section 57-43.1-03.2 of the North Dakota Century Code is amended and reenacted as follows:

**57-43.1-03.2. Refund of tax for fuel purchased by native Americans - Fuels tax refund reserve fund - Continuing appropriation.**

1. A native American may file a claim with the tax commissioner for a refund of motor vehicle fuel taxes paid by that person under this chapter or special fuel taxes paid under chapter 57-43.2 if the motor vehicle fuel or special fuel was purchased from a retail fuel dealer located on the Indian reservation where the native American is an enrolled member and the fuel was delivered to the native American on that reservation. The refund provisions of this chapter apply to refund claims made under this section.
2. A fuels tax refund reserve fund is created as a special fund in the state treasury. The tax commissioner shall deposit in that fund such amounts from motor vehicle fuel tax and special fuel tax collections as ~~the attorney general determines~~ necessary to be expended for refunds to which native American government entities may be entitled under qualifying circumstances and

conditions determined by the attorney general. There is appropriated as a continuing appropriation out of funds set aside under this subsection so much of the funds as ~~the attorney general determines~~ is necessary to meet the expenditures authorized under this subsection and such funds may be expended for that purpose.

**SECTION 9. ATTORNEY GENERAL REFUND FUND TRANSFER TO THE GENERAL FUND - EXEMPTION.** Notwithstanding section 54-12-18, the attorney general may retain the balance in the attorney general refund fund that would otherwise be transferred to the general fund on June 30, 2011.

**SECTION 10. PROJECT PLANNING AND IMPLEMENTATION.** The attorney general shall involve the information technology department in the study and planning of the criminal history repository replacement project, for the biennium beginning July 1, 2011, and ending June 30, 2013. The attorney general shall include information technology department architects in software development, computer systems, and security and network on the project team responsible for the study and planning of the project and receive approval from the information technology department before proceeding with any study recommendations relating to the project.

**SECTION 11. LEGISLATIVE INTENT - EMPLOYEE POSITIONS PAID WITH FEDERAL FISCAL STIMULUS FUNDS.** It is the intent of the sixty-second legislative assembly that the attorney general's base budget for the 2013-15 biennium not include funding or full-time equivalent positions for employees paid for with federal fiscal stimulus funds during the 2011-13 biennium. The attorney general may request funding for these positions as optional requests in the agency's budget request for the 2013-15 biennium.

**SECTION 12. EMERGENCY.** Section 9 of this Act is declared to be an emergency measure.

Approved May 9, 2011  
Filed May 9, 2011



## CHAPTER 30

### SENATE BILL NO. 2004

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

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

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are 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, 2011, and ending June 30, 2013, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$7,915,046	\$711,712	\$8,626,758
Operating expenses	759,985	34,587	794,572
Information technology consultants	<u>150,000</u>	<u>0</u>	<u>150,000</u>
Total all funds	\$8,825,031	\$746,299	\$9,571,330
Less estimated income	<u>2,312,802</u>	<u>114,720</u>	<u>2,427,522</u>
Total general fund	\$6,512,229	\$631,579	\$7,143,808
Full-time equivalent positions	51.80	(1.00)	50.80

**SECTION 2. ONE-TIME FUNDING.** The following amounts reflect the one-time funding items approved by the sixty-first legislative assembly for the 2009-11 biennium:

<u>One-Time Funding Description</u>	<u>2009-11</u>	<u>2011-13</u>
Electronic working papers	<u>\$150,000</u>	<u>\$0</u>
Total general fund	\$150,000	\$0

**SECTION 3. APPROPRIATION - LEGISLATIVE COUNCIL.** 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 legislative council for the purpose of contracting for a performance review of the state auditor's office, for the biennium beginning July 1, 2011, and ending June 30, 2013. The legislative management may solicit bids from national private accounting firms and contract by October 1, 2011, for a performance review of the state auditor's office, including quality controls, procedures, technical applications, professionalism, customer feedback, efficiency, staffing review, and reporting. The performance review, if conducted, must be completed by July 1, 2012.

**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 ~~eighty-three~~ninety thousand ~~five~~three hundred ~~fifty~~sixty dollars through June 30, ~~2010~~2012, and ~~eighty-seven~~ninety-three thousand ~~seven hundred twenty-eight~~seventy-one dollars thereafter.

Approved May 9, 2011  
Filed May 10, 2011

## CHAPTER 31

### SENATE BILL NO. 2005

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

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

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury not otherwise appropriated, to the state treasurer for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2011, and ending June 30, 2013, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$946,507	\$108,017	\$1,054,524
Operating expenses	131,478	266,588	398,066
In lieu of tax payments	1,151,000	(1,151,000)	0
Coal severance payments	<u>0</u>	<u>252,800</u>	<u>252,800</u>
Total general fund	\$2,228,985	(\$523,595)	\$1,705,390
Full-time equivalent positions	7.00	0.00	7.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-THIRD LEGISLATIVE ASSEMBLY.** The following amounts reflect the 2011-13 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2009-11</u>	<u>2011-13</u>
IT development costs	\$0	\$266,588
Total general fund	\$0	\$266,588

The 2011-13 one-time funding amounts are not a part of the entity's base budget for the 2013-15 biennium. The state treasurer shall report to the appropriations committees of the sixty-third legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 3. 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 ~~seventy-eight thousand five hundred ninety-three~~ seventy-eight thousand five hundred thirty dollars through June 30, ~~2010~~ 2012, and ~~eighty-two thousand eight hundred forty-five~~ eighty-two thousand eight hundred forty-five dollars thereafter.

Approved May 5, 2011  
Filed May 5, 2011

## CHAPTER 32

### SENATE BILL NO. 2006

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

AN ACT to provide an appropriation for defraying the expenses of the office of the state tax commissioner and for payment of state reimbursement under the homestead tax credit and disabled veterans credit; to provide for a transfer; to amend and reenact section 57-01-04 of the North Dakota Century Code, relating to the tax commissioner's salary; to provide for a legislative management study; to provide a contingent appropriation; 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 state tax commissioner for the purpose of defraying the expenses of the state tax commissioner and paying the state reimbursement under the homestead tax credit and disabled veteran credit, for the biennium beginning July 1, 2011, and ending June 30, 2013, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$16,910,525	\$1,887,185	\$18,797,710
Operating expenses	5,345,814	2,052,217	7,398,031
Capital assets	58,000	(42,000)	16,000
Homestead tax credit	5,964,000	2,828,788	8,792,788
Disabled veteran credit	<u>3,000,000</u>	<u>1,243,920</u>	<u>4,243,920</u>
Total all funds	\$31,278,339	\$7,970,110	\$39,248,449
Less estimated income	<u>96,000</u>	<u>(86,000)</u>	<u>10,000</u>
Total general fund	\$31,182,339	\$8,056,110	\$39,238,449
Full-time equivalent positions	133.00	1.00	134.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-THIRD LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-first legislative assembly for the 2009-11 biennium and the 2011-13 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2009-11</u>	<u>2011-13</u>
Integrated tax system loan payment	\$10,230,247	\$0
Onsite support - Gen Tax	1,234,000	0
Oil and gas integration to Gen Tax	1,500,000	0
Gen Tax upgrade	<u>0</u>	<u>1,000,000</u>
Total all funds	\$12,964,247	\$1,000,000
Total special funds	<u>100,000</u>	<u>0</u>
Total general fund	\$12,864,247	\$1,000,000

The 2011-13 one-time funding amounts are not a part of the entity's base budget for the 2013-15 biennium. The tax commissioner shall report to the appropriations

committees of the sixty-third legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 3. 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 \$1,485,000 for the purpose of reimbursing the general fund for expenses incurred in the collection of the motor vehicle fuels and special fuels taxes and the administration of these taxes.

**SECTION 4. 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 ~~ninety-ninety-eight thousand six hundred seventy-eight~~sixty-eight dollars through June 30, ~~2010~~2012, and ~~ninety-five one hundred one thousand two hundred twelve~~ten dollars thereafter.

**SECTION 5. EXEMPTION - GRANT TO NORTH DAKOTA STATE UNIVERSITY.** Up to \$50,000 of the general fund appropriation to the state tax commissioner in section 1 of chapter 6 of the 2009 Session Laws is not subject to the provisions of section 54-44.1-11 and may be distributed by the state tax commissioner as a grant to North Dakota state university, department of agribusiness and applied economics, for the purpose of converting the software of the core model used for the preparation of agricultural land valuations as required under section 57-02-27.2, during the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 6. LEGISLATIVE MANAGEMENT STUDY - INCOME TAX CREDITS.** During the 2011-12 interim, the legislative management shall consider studying the state's income tax credits. The study must involve the state tax commissioner and include an inventory of all of the state's income tax credits, a review of the nature of each credit, an indication of the targeted class of recipients of each credit, an analysis of possible barriers to using the credits, an analysis of possible gaps and overlaps in the state's income tax credits, the relationship of state income tax credits to federal tax policy, and a review of the effectiveness of each credit. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

**SECTION 7. CONTINGENT FUNDING - EMERGENCY COMMISSION APPROVAL.** The funds appropriated in the salaries and wages line item in section 1 of this Act include \$112,883 from the general fund and the funds appropriated in the operating expenses line item in section 1 of this Act include \$29,440 from the general fund which may be used by the tax department to hire one full-time equivalent position also included in section 1 of this Act, upon emergency commission approval, for the purpose of performing additional compliance projects. The emergency commission may approve the use of these funds and the additional full-time equivalent position only if the tax department certifies that compliance projects conducted by the new compliance officer authorized by the 2011 legislative assembly have resulted in the collection of at least \$500,000, during the nine-month period beginning on the date the new compliance officer position is filled.

Approved May 5, 2011  
Filed May 5, 2011

## CHAPTER 33

### SENATE BILL NO. 2007

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

AN ACT to provide an appropriation for defraying the expenses of the labor commissioner.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the labor commissioner for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2011, and ending June 30, 2013, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$1,512,004	\$136,338	\$1,648,342
Operating expenses	302,330	13,964	316,294
Total all funds	\$1,814,334	\$150,302	\$1,964,636
Less estimated income	412,751	11,760	424,511
Total general fund	\$1,401,583	\$138,542	\$1,540,125
Full-time equivalent positions	12.00	0.00	12.00

Approved May 5, 2011

Filed May 5, 2011

## CHAPTER 34

### SENATE BILL NO. 2008

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

AN ACT to provide an appropriation for defraying the expenses of the public service commission; to amend and reenact section 49-01-05 of the North Dakota Century Code, relating to the salary of public service commissioners; to provide for a legislative management study; and to authorize 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 that agency, for the biennium beginning July 1, 2011, and ending June 30, 2013, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$6,747,961	\$734,113	\$7,482,074
Operating expenses	1,944,946	27,626	1,972,572
Capital assets	127,500	(74,500)	53,000
Grants	10,000	6,000	16,000
Abandoned mined lands contractual	6,500,000	1,500,000	8,000,000
Rail rate complaint case	900,000	0	900,000
Federal stimulus funds	<u>0</u>	<u>658,217</u>	<u>658,217</u>
Total all funds	\$16,230,407	\$2,851,456	\$19,081,863
Less estimated income	<u>10,627,242</u>	<u>2,434,406</u>	<u>13,061,648</u>
Total general fund	\$5,603,165	\$417,050	\$6,020,215
Full-time equivalent positions	43.00	0.00	43.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-THIRD LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-first legislative assembly for the 2009-11 biennium and the 2011-13 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2009-11</u>	<u>2011-13</u>
Federal stimulus funds	\$0	\$658,217
Total special funds	\$0	\$658,217

The 2011-13 one-time funding amounts are not a part of the entity's base budget for the 2013-15 biennium. The public service commission shall report to the appropriations committees of the sixty-third legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 3. 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 ~~eighty-five~~ninety-two thousand eight hundred ~~thirty-two~~six dollars through June 30, ~~2010~~2012, and ~~ninety-five~~ninety-five thousand ~~one~~six hundred ~~twenty-two~~eleven 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 4. TRANSFER AND REPAYMENT - BEGINNING FARMER REVOLVING LOAN FUND.** 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, shall be transferred by the Bank of North Dakota from the beginning farmer revolving loan fund to the public service commission to pay for costs associated with a rail rate complaint case. Transfers shall be made during the biennium beginning July 1, 2011, and ending June 30, 2013, 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 rate complaint case.

**SECTION 5. LEGISLATIVE MANAGEMENT STUDY - PIPELINE SAFETY STUDY.** During the 2011-12 interim, the legislative management shall consider studying gas pipelines in the state focusing on safety concerns of gas utility distribution and transmission. The study must include all pipeline activity and address the jurisdiction of pipelines in the state in consultation with the public service commission, industrial commission, and North Dakota one call. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

Approved May 5, 2011  
Filed May 5, 2011



## CHAPTER 35

### SENATE BILL NO. 2009

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

AN ACT to provide an appropriation for defraying the expenses of the agriculture commissioner; to amend and reenact sections 4-01-21 and 4-01-23, subsection 2 of section 5-01-17, subsection 2 of section 5-01-19, and sections 19-20.1-03, 19-20.1-03.1, and 19-20.1-06 of the North Dakota Century Code, relating to the salary of the agriculture commissioner, the promotion of sustainably grown commodities, domestic wineries and domestic distilleries, and fertilizer distribution registration, licensing, and inspection fees; to provide for a transfer; 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 agriculture commissioner for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2011, and ending June 30, 2013, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$8,566,196	\$1,146,168	\$9,712,364
Operating expenses	6,094,603	356,850	6,451,453
Capital assets	5,000	12,000	17,000
Grants	2,969,825	201,003	3,170,828
State board of animal health	2,563,325	(414,273)	2,149,052
Wildlife services	1,067,400	350,000	1,417,400
Crop harmonization board	<u>50,000</u>	<u>25,000</u>	<u>75,000</u>
Total all funds	\$21,316,349	\$1,676,748	\$22,993,097
Less estimated income	<u>14,094,466</u>	<u>706,785</u>	<u>14,801,251</u>
Total general fund	\$7,221,883	\$969,963	\$8,191,846
Full-time equivalent positions	74.50	2.50	77.00

**SECTION 2. ONE-TIME FUNDING.** The following amounts reflect the one-time funding items approved by the sixty-first legislative assembly for the 2009-11 biennium:

<u>One-Time Funding Description</u>	<u>2009-11</u>	<u>2011-13</u>
Johne's disease	<u>\$245,500</u>	<u>\$0</u>
Total general fund	\$245,500	\$0

**SECTION 3. APPROPRIATION - 2009-11 BIENNIUM - WILDLIFE SERVICES.** There is appropriated out of any special funds received from the game and fish department, not otherwise appropriated, the sum of \$200,000, or so much of the sum as may be necessary, to the agriculture commissioner for the purpose of providing funding for the wildlife services program, for the period beginning with the effective date of this Act and ending June 30, 2011.

**SECTION 4. ESTIMATED INCOME - ENVIRONMENT AND RANGELAND PROTECTION FUND.** The estimated income line item in section 1 of this Act includes the sum of \$5,103,037, or so much of the sum as may be available, from the environment and rangeland protection fund for the purpose of defraying the expenses of various agriculture department programs, for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 5. TRANSFER - ENVIRONMENT AND RANGELAND PROTECTION FUND - MINOR USE PESTICIDE FUND.** The agriculture commissioner shall transfer \$200,000 from the environment and rangeland protection fund to the minor use pesticide fund during the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 6. ESTIMATED INCOME - GAME AND FISH FUND - TRANSFER.** The estimated income line item in section 1 of this Act includes the sum of \$1,068,261 from the game and fish department operating fund which the game and fish department shall transfer to the agriculture commissioner for the purpose of defraying the expenses of various agriculture department programs, for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 7. ESTIMATED INCOME - STATE WATER COMMISSION - TRANSFER.** The estimated income line item in section 1 of this Act includes the sum of \$250,000 which the state water commission shall transfer to the agriculture commissioner for the wildlife services program, for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 8. EXEMPTION - JOHNE'S DISEASE CONTROL.** The amount appropriated for John's disease control in section 1 of chapter 61 of the 2009 Session Laws is not subject to section 54-44.1-11 and any unexpended appropriations may be continued into the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 9. AMENDMENT.** Section 4-01-21 of the North Dakota Century Code is amended and reenacted as follows:

**4-01-21. Salary of agriculture commissioner.**

The annual salary of the agriculture commissioner is ~~eighty-five~~eighty-five ~~ninety-two~~ninety-two thousand eight hundred ~~thirty-two~~thirty-two ~~six~~six dollars through June 30, ~~2010~~2012, and ~~ninety-five~~ninety-five thousand ~~one~~one ~~six~~six hundred ~~twenty-two~~twenty-two ~~ten~~ten dollars thereafter.

**SECTION 10. AMENDMENT.** Section 4-01-23 of the North Dakota Century Code is amended and reenacted as follows:

**4-01-23. (Effective July 1, 2011) Sustainably grown in North Dakota - Application - Logo - Promotion of commodities.**

1. The agriculture commissioner ~~shall~~may implement a program to promote agricultural commodities that are sustainably grown in North Dakota.
2. ~~If a program referenced in subsection 1 is implemented, the program must require that a producer may apply to file an application with the commissioner and upon demonstrating. If the producer demonstrates that the producer's growing practices with respect to a particular commodity meet the commissioner's established criteria for sustainability, the commissioner shall authorize the producer to label and market the commodity as being sustainably grown in North Dakota.~~

3. The commissioner ~~shall~~may develop and make available for the use of authorized producers a logo indicating that the commodity is sustainably grown in North Dakota. The commissioner ~~shall~~may actively support and promote the sale and use of products identified as sustainably grown in North Dakota.
4. The commissioner may establish and charge producers a fee for participating in the program. The commissioner shall forward all fees collected under this section to the state treasurer for deposit in the general fund.
5. The agriculture commissioner may engage in research and provide education to members of the public regarding agricultural commodities that are sustainably grown in this state.
6. For purposes of this section, "sustainably grown" means that a crop is grown using research-based practices that result in:
  - a. Increased efficiencies in soil and nutrient preservation;
  - b. Decreased reliance on tillage and other soil-depleting practices;
  - c. Increased efficiencies in the use of water;
  - d. Increased efficiencies in the use of other necessary and measurable agricultural inputs;
  - e. Increased yield efficiencies; and
  - f. Greater economic benefit to producers.

<sup>5</sup> **SECTION 11. AMENDMENT.** Subsection 2 of section 5-01-17 of the North Dakota Century Code is amended and reenacted as follows:

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 [94625 liters] in a calendar year; glassware; wine literature and accessories; and cheese, cheese spreads, and other snack food items. A licensee may dispense free samples of the wines offered for sale. Subject to local ordinance, sales at on sale and off sale may be made on Sundays between twelve noon and twelve midnight. The state tax commissioner may issue special events permits for not more than twenty days per calendar year to a domestic winery allowing the winery, subject to local ordinance, to give free samples of its wine and to sell its wine by the glass or in closed containers, at ~~a designated trade show, convention, festival, or a similar event approved by the state tax commissioner~~off-premises events. 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 state tax commissioner no later than the last day of each calendar month reporting sales made during the preceding

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<sup>5</sup> Section 5-01-17 was also amended by section 1 of House Bill No. 1099, chapter 72.

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.

**6 SECTION 12. AMENDMENT.** Subsection 2 of section 5-01-19 of the North Dakota Century Code is amended and reenacted as follows:

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 [94625 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 events permits for not more than twenty 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 a designated trade show, convention, festival, or similar event approved by the tax commissioner~~ at off-premises events. A domestic distillery may not engage in any wholesaling activities. 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.

**SECTION 13. AMENDMENT.** Section 19-20.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**19-20.1-03. Registration.**

Each brand and grade of fertilizer, material, foliar fertilizer, micronutrient, specialty fertilizer, soil amendment, or plant amendment must be registered in the name of the person whose name appears upon the label before being offered for sale or distributed in this state. The application for registration must be submitted to the commissioner on a form furnished by the commissioner and must be accompanied by a fee of fifty dollars. Upon approval by the commissioner, a certificate of registration must be furnished to the applicant. Registrations cover a two-year period beginning July first and ending June thirtieth of every even-numbered year. Distribution of fertilizer products without prior registration or renewal received after July thirty-first must be assessed a penalty of twenty-five dollars per product. A distributor is not required to register any brand of fertilizer, soil amendment, or plant amendment that is already registered under this chapter by another person, providing the label complies with the issued registration. Compost that is transferred between parties without compensation is exempt from these requirements. The agriculture commissioner shall

<sup>6</sup> Section 5-01-19 was also amended by section 2 of House Bill No. 1099, chapter 72.

forward all fees received under this section to the state treasurer for deposit in the environment and rangeland protection fund.

**SECTION 14. AMENDMENT.** Section 19-20.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**19-20.1-03.1. License required - Penalty.**

A person may not distribute any fertilizer, soil amendment, or plant amendment in this state without first obtaining a distributor's license from the commissioner. However, a distributor's license is not required for those distributors selling only specialty fertilizers. A license must be obtained for each location or mobile mechanical unit used by a distributor in the state. The application for the license must be submitted on a form furnished by the commissioner and must be accompanied by a fee of one hundred dollars. A license covers a two-year period beginning July first and ending June thirtieth of every even-numbered year. License renewal applications received after July thirty-first may be assessed a penalty fee of twenty dollars. Licenses are not transferable, and each license must be conspicuously posted at each location and must accompany each mobile mechanical unit operating in the state. The agriculture commissioner shall forward all fees received under this section to the state treasurer for deposit in the environment and rangeland protection fund.

**7 SECTION 15. AMENDMENT.** Section 19-20.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**19-20.1-06. Inspection fees and tonnage reports.**

There must be paid to the commissioner for all fertilizers, soil amendments, or plant amendments distributed in this state an inspection fee at the rate of twenty cents per ton [907.18 kilograms]. The inspection fee may not be less than ten dollars. Sales to manufacturers or exchanges between them are exempt from the inspection fee. Fees collected under this section must be ~~used for the payment of the costs of inspection, sampling, and analysis, and other expenses necessary for the administration of this chapter~~ forwarded to the state treasurer for deposit in the environment and rangeland protection fund.

Individual packages of fertilizers, soil amendments, or plant amendments sold exclusively in packages of twenty-five pounds [11.34 kilograms] or less are exempt from the provisions of this section. If a person sells fertilizer, soil amendments, or plant amendments in packages of twenty-five pounds [11.34 kilograms] or less and in packages over twenty-five pounds [11.34 kilograms], that portion sold in packages over twenty-five pounds [11.34 kilograms] is subject to the same inspection fee of twenty cents per ton [907.18 kilograms], including the minimum ten dollar fee, as provided in this chapter.

Every licensed person who distributes a fertilizer, soil amendment, or plant amendment to a nonlicensed person in this state shall file with the commissioner, on forms furnished by the commissioner, an annual statement for the calendar year, setting forth the number of net tons [kilograms] of each fertilizer, soil amendment, or plant amendment so distributed in this state during the period. A licensed end user shall report all sales and purchases and pay the appropriate tonnage tax. The statement is due on or before January thirty-first of the following year. The person filing the statement shall pay the inspection fee at the rate stated in this section. If the

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<sup>7</sup> Section 19-20.1-06 was also amended by section 1 of House Bill No. 1321, chapter 168.

tonnage statement is not filed and the payment of inspection fee is not made by January thirty-first, a collection fee amounting to ten percent, minimum ten dollars, of the amount must be assessed against the licensee, and the amount of fees due constitute a debt and become the basis of a judgment against the licensee.

**SECTION 16. EMERGENCY.** Section 3 of this Act is declared to be an emergency measure.

Approved May 5, 2011

Filed May 5, 2011

## CHAPTER 36

### SENATE BILL NO. 2010

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

AN ACT to provide an appropriation for defraying the expenses of the insurance commissioner; to provide for making payments of insurance premiums tax collections to fire departments; to amend and reenact section 26.1-01-09 of the North Dakota Century Code, relating to the commissioner's salary; and to provide for reports to the budget section.

#### 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 the insurance commissioner for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2011, and ending June 30, 2013, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$6,335,670	\$524,160	\$6,859,830
Operating expenses	2,063,264	1,368,636	3,431,900
Capital assets	170,000	(100,000)	70,000
Grants	<u>6,990,000</u>	<u>50,000</u>	<u>7,040,000</u>
Total special funds	\$15,558,934	\$1,842,796	\$17,401,730
Full-time equivalent positions	45.50	0.00	45.50

**SECTION 2. ONE-TIME FUNDING.** The following amounts reflect the one-time funding items approved by the sixty-first legislative assembly for the 2009-11 biennium:

<u>One-Time Funding Description</u>	<u>2009-11</u>	<u>2011-13</u>
Transfer to bonding fund	<u>\$500,000</u>	<u>\$0</u>
Total special funds	\$500,000	\$0

**SECTION 3. INSURANCE TAX DISTRIBUTION FUND PAYMENTS - USES.** Section 1 of this Act includes \$6,870,000 from the insurance tax distribution fund, of which \$6,200,000 is for the purpose of making payments to fire departments and \$670,000 is for the purpose of making two equal payments to the North Dakota firefighter's association, for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 4. BONDING FUND.** Section 1 of this Act includes \$46,769 from the state bonding fund to pay bonding fund administrative expenses for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 5. FIRE AND TORNADO FUND.** Section 1 of this Act includes \$1,611,575 from the state fire and tornado fund, including \$170,000 for a grant to the North Dakota firefighter's association and \$1,441,575 to pay fire and tornado fund

administrative expenses, for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 6. UNSATISFIED JUDGMENT FUND.** Section 1 of this Act includes \$27,349 from the state unsatisfied judgment fund to pay unsatisfied judgment fund administrative expenses for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 7. PETROLEUM RELEASE COMPENSATION FUND.** Section 1 of this Act includes \$46,769 from the petroleum release compensation fund to pay petroleum release compensation fund administrative expenses for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 8. 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 ~~eighty-three~~ninety thousand ~~five~~three hundred ~~fifty~~sixty dollars through June 30, ~~2010~~2012, and ~~eighty-seven~~ninety-three thousand ~~seven~~hundred ~~twenty-eight~~seventy-one dollars thereafter.

**SECTION 9. REPORTS TO BUDGET SECTION.** The insurance commissioner shall report at each budget section meeting during the 2011-12 interim on the status of provisions of the Patient Protection and Affordable Care Act.

Approved May 9, 2011  
Filed May 9, 2011



## CHAPTER 37

### SENATE BILL NO. 2011

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

AN ACT to provide an appropriation for defraying the expenses of the securities commissioner.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from fees or other income, to the securities commissioner for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2011, and ending June 30, 2013, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$1,399,120	\$120,858	\$1,519,978
Operating expenses	<u>706,441</u>	<u>0</u>	<u>706,441</u>
Total all funds	\$2,105,561	\$120,858	\$2,226,419
Less estimated income	<u>317,199</u>	<u>0</u>	<u>317,199</u>
Total general fund	\$1,788,362	\$120,858	\$1,909,220
Full-time equivalent positions	9.00	0.00	9.00

Approved May 9, 2011

Filed May 9, 2011

## CHAPTER 38

### SENATE BILL NO. 2012

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

AN ACT to provide an appropriation for defraying the expenses of the department of human services; to provide an exemption; to provide legislative intent; 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 department of human services for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 2011, and ending June 30, 2013, as follows:

##### Subdivision 1.

#### MANAGEMENT

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$14,231,353	\$2,226,715	\$16,458,068
Operating expenses	46,548,787	15,735,631	62,284,418
Capital assets	0	138,400	138,400
Total all funds	\$60,780,140	\$18,100,746	\$78,880,886
Less estimated income	34,477,817	13,285,595	47,763,412
Total general fund	\$26,302,323	\$4,815,151	\$31,117,474

##### Subdivision 2.

#### PROGRAM AND POLICY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$41,389,716	\$8,330,668	\$49,720,384
Operating expenses	75,461,417	16,961,863	92,423,280
Capital assets	8,580	(8,580)	0
Grants	452,990,742	34,015,295	487,006,037
Grants - Medical assistance	1,300,642,323	300,182,682	1,600,825,005
Total all funds	\$1,870,492,778	\$359,481,928	\$2,229,974,706
Less estimated income	1,381,801,240	115,058,125	1,496,859,365
Total general fund	\$488,691,538	\$244,423,803	\$733,115,341

Subdivision 3.

HUMAN SERVICE CENTERS AND INSTITUTIONS

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Northwest human service center	\$8,452,001	\$222,567	\$8,674,568
North central human service center	19,208,018	1,694,208	20,902,226
Lake region human service center	10,886,645	357,661	11,244,306
Northeast human service center	25,768,431	2,321,019	28,089,450
Southeast human service center	30,139,636	7,868,498	38,008,134
South central human service center	15,567,495	1,291,516	16,859,011
West central human service center	24,683,076	1,669,367	26,352,443
Badlands human service center	10,857,338	850,716	11,708,054
State hospital	65,641,609	7,581,591	73,223,200
Developmental center	<u>52,939,281</u>	<u>(1,130,034)</u>	<u>51,809,247</u>
Total all funds	\$264,143,530	\$22,727,109	\$286,870,639
Less estimated income	<u>132,787,875</u>	<u>(7,198,220)</u>	<u>125,589,655</u>
Total general fund	\$131,355,655	\$29,925,329	\$161,280,984

Subdivision 4.

BILL TOTAL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$646,349,516	\$279,164,283	\$925,513,799
Grand total special funds	<u>1,549,066,932</u>	<u>121,145,500</u>	<u>1,670,212,432</u>
Grand total all funds	\$2,195,416,448	\$400,309,783	\$2,595,726,231
Full-time equivalent positions	2,216.88	(27.53)	2,189.35

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-THIRD LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-first legislative assembly for the 2009-11 biennium and the 2011-13 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2009-11</u>	<u>2011-13</u>
Developmental disabilities rate study	\$100,000	\$0
Supplemental payment	400,000	0
Extraordinary repairs	3,443,692	0
Federal stimulus funds	88,033,205	519,175
Supplemental payment	0	400,000
Equipment over \$5,000	352,606	0
State hospital capital projects	<u>0</u>	<u>1,800,000</u>
Total all funds	\$92,329,503	\$2,719,175
Less estimated income	<u>88,033,205</u>	<u>919,175</u>
Total general fund	\$4,296,298	\$1,800,000

The 2011-13 one-time funding amounts are not a part of the entity's base budget for the 2013-15 biennium. The department of human services shall report to the appropriations committees of the sixty-third legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 3. FUNDING TRANSFERS - EXCEPTION - AUTHORIZATION.** Notwithstanding section 54-16-04, the department of human services may transfer appropriation authority between line items within each subdivision of section 1 of this

Act and between subdivisions within section 1 of this Act for the biennium beginning July 1, 2011, and ending June 30, 2013. The department shall notify the office of management and budget of any transfer made pursuant to this section. The department shall report to the budget section after June 30, 2012, any transfers made in excess of \$50,000 and to the appropriations committees of the sixty-third legislative assembly regarding any transfers made pursuant to this section.

**SECTION 4. EXEMPTION.** The amount appropriated for the replacement of the medicaid management information system in chapter 50 of the 2007 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 2009-11 biennium are available for the completion of the medicaid management information system project during the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 5. GENERAL FUND TRANSFER TO BUDGET STABILIZATION FUND - EXCEPTION - USE OF GENERAL FUND AMOUNTS.** Notwithstanding section 54-27.2-02, the state treasurer and the office of management and budget may not include in the amount used to determine general fund transfers to the budget stabilization fund at the end of the 2009-11 biennium under chapter 54-27.2 any general fund amounts resulting from the increased federal share of medical assistance payments resulting from federal medical assistance percentage changes under the American Recovery and Reinvestment Act of 2009 and H.R.1586. The state treasurer and the office of management and budget shall separately account for these amounts resulting from federal medical assistance percentage changes under the American Recovery and Reinvestment Act of 2009 and H.R.1586 and use these amounts to defray the expenses of continuing program costs of the department of human services from the general fund, for the biennium beginning July 1, 2011, and ending June 30, 2013, including \$23,451,104 for inflationary increases for human services providers.

**SECTION 6. REPORT ON THE DEMENTIA CARE SERVICES PROGRAM.** During the 2011-12 interim, the department of human services shall periodically report to the legislative management regarding the status of the dementia care services program. The reports must include information on budgeted and actual program expenditures, program services, and program outcomes.

**SECTION 7. RISK BEHAVIOR PREVENTION GRANTS - MATCHING REQUIREMENTS.** The department of human services shall use \$250,000 of federal funding appropriated in subdivision 2 of section 1 of this Act for the mental health and substance abuse division for providing grants to support a statewide school and community-based youth network dedicated to implementing risk behavior prevention efforts, for the biennium beginning July 1, 2011, and ending June 30, 2013. The department shall require an entity receiving a grant under this section to provide \$1 of matching funds for each \$1 of state funds provided.

**SECTION 8. LEGISLATIVE INTENT - DEVELOPMENTAL DISABILITIES GRANTS.** It is the intent of the legislative assembly that the department of human services use any anticipated unexpended appropriation authority relating to developmental disabilities grants resulting from caseload or cost changes during the 2011-13 biennium for costs associated with transitioning individuals from the developmental center to communities during the 2011-13 biennium.

**SECTION 9. LEGISLATIVE MANAGEMENT STUDY - QUALIFIED SERVICE PROVIDER SYSTEM.** During the 2011-12 interim, the legislative management shall consider studying and evaluating the state's qualified service provider system. The

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

**SECTION 10. SUPPLEMENTAL PAYMENT - HEALTH CARE TRUST FUND.**

The grants - medical assistance line item in subdivision 2 of section 1 of this Act includes \$400,000 from the health care trust fund which the department shall provide as a one-time grant, for the biennium beginning July 1, 2011, and ending June 30, 2013. The department shall provide a grant of \$200,000 to the government nursing facility that participated in the intergovernmental transfer payment program in a city with a population of more than six hundred according to the 2000 census and a grant of \$200,000 to the hospital in a city with a population of less than five hundred according to the 2000 census which also has a government nursing facility that participated in the intergovernmental transfer payment program.

Approved May 9, 2011

Filed May 9, 2011

## CHAPTER 39

### SENATE BILL NO. 2013

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

AN ACT to provide an appropriation for defraying the expenses of the department of public instruction, the school for the deaf, North Dakota vision services - school for the blind, and the state library; to provide an appropriation to the information technology department; to provide an appropriation to the North Dakota university system office; to provide for the distribution of funding for regional education association grants, continuing education grants, gifted and talented programs and medicaid matching funds, and other grants; to amend and reenact section 15.1-02-02 of the North Dakota Century Code, relating to the salary of the superintendent of public instruction; to repeal section 15.1-13-33 of the North Dakota Century Code, relating to the national board certification fund; to provide an exemption; to provide for a transfer; to amend and reenact sections 54 and 59 of chapter 175 of the 2009 Session Laws, relating to funds appropriated for transportation and state school aid; 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 department of public instruction, the school for the deaf, North Dakota vision services - school for the blind, and the state library for the purpose of defraying the expenses of those agencies, for the biennium beginning July 1, 2011, and ending June 30, 2013, as follows:

Subdivision 1.

#### DEPARTMENT OF PUBLIC INSTRUCTION

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$13,504,455	\$904,845	\$14,409,300
Operating expenses	30,770,801	(1,087,614)	29,683,187
Grants - State school aid	722,725,958	195,733,520	918,459,478
Grants - Special education contracts	15,500,000	500,000	16,000,000
Grants - Supplemental one-time	85,644,337	(85,644,337)	0
Grants - Supplemental operations	16,795,584	(16,795,584)	0
Grants - Transportation	43,500,000	5,000,000	48,500,000
Grants - Other grants	245,203,721	58,780,672	303,984,393
Grants - Mill levy reduction	295,000,000	(295,000,000)	0
Education jobs fund	0	21,517,716	21,517,716
Transportation efficiency	30,000	0	30,000
National board certification	102,500	82,500	185,000
Total all funds	\$1,468,777,356	(\$116,008,282)	\$1,352,769,074
Less estimated income	360,597,766	90,605,657	451,203,423
Total general fund	\$1,108,179,590	(\$206,613,939)	\$901,565,651
Full-time equivalent positions	99.75	0.00	99.75

## Subdivision 2.

## STATE LIBRARY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$3,193,791	\$256,568	\$3,450,359
Operating expenses	1,482,573	213,153	1,695,726
Grants	<u>1,852,500</u>	<u>400,000</u>	<u>2,252,500</u>
Total all funds	\$6,528,864	\$869,721	\$7,398,585
Less estimated income	<u>1,927,836</u>	<u>206,774</u>	<u>2,134,610</u>
Total general fund	\$4,606,028	\$662,947	\$5,263,975
Full-time equivalent positions	29.75	0.00	29.75

## Subdivision 3.

## SCHOOL FOR THE DEAF

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$5,429,998	\$502,640	\$5,932,638
Operating expenses	1,572,603	61,308	1,633,911
Capital assets	327,745	712,485	1,040,230
Grants	<u>200,000</u>	<u>0</u>	<u>200,000</u>
Total all funds	\$7,530,346	\$1,276,433	\$8,806,779
Less estimated income	<u>1,331,450</u>	<u>756,557</u>	<u>2,088,007</u>
Total general fund	\$6,198,896	\$519,876	\$6,718,772
Full-time equivalent positions	43.94	0.00	43.94

## Subdivision 4.

## VISION SERVICES - SCHOOL FOR THE BLIND

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$3,531,264	\$284,561	\$3,815,825
Operating expenses	667,006	84,500	751,506
Capital assets	<u>39,500</u>	<u>25,500</u>	<u>65,000</u>
Total all funds	\$4,237,770	\$394,561	\$4,632,331
Less estimated income	<u>815,902</u>	<u>19,189</u>	<u>835,091</u>
Total general fund	\$3,421,868	\$375,372	\$3,797,240
Full-time equivalent positions	29.50	0.00	29.50

## Subdivision 5.

## BILL TOTAL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$1,122,401,382	(\$194,924,744)	\$927,476,638
Grand total special funds	<u>364,672,954</u>	<u>91,588,177</u>	<u>456,261,131</u>
Grand total all funds	\$1,487,074,336	(\$103,336,567)	\$1,383,737,769

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-THIRD LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-first legislative assembly for the 2009-11

biennium and the 2011-13 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2009-11</u>	<u>2011-13</u>
Department of public instruction		
IT application rewrite and maintenance	\$500,000	\$384,000
National board certification fund	500,000	0
Federal fiscal stimulus - School aid	85,644,337	0
Federal fiscal stimulus - Other	67,379,051	0
Geographic alliance endowment	<u>226,000</u>	<u>0</u>
Total department of public instruction - All funds	\$154,249,388	\$384,000
Total department of public instruction - Estimated income	<u>153,023,388</u>	<u>0</u>
Total department of public instruction - General fund	\$1,226,000	\$384,000
School for the deaf		
Virtual services business plan	\$25,000	\$0
Facility master plan	41,000	0
Extraordinary repairs	0	103,800
Trades building remodel	<u>1,670,000</u>	<u>0</u>
Total school for the deaf - All funds	\$1,736,000	\$103,800
Total school for the deaf - Estimated income	<u>835,000</u>	<u>0</u>
Total school for the deaf - General fund	\$901,000	\$103,800
School for the blind - Vision services		
Equipment	\$39,200	\$25,500
Window replacement	31,000	0
Facility master plan	0	20,000
Instructional equipment	<u>0</u>	<u>24,500</u>
Total school for the blind - All funds	\$70,200	\$70,000
Total school for the blind - Estimated income	<u>0</u>	<u>0</u>
Total school for the blind - General fund	\$70,200	\$70,000
Grand total - All funds	\$156,055,588	\$557,800
Grand total - Estimated income	<u>153,858,388</u>	<u>0</u>
Grand total - General fund	\$2,197,200	\$557,800

The 2011-13 one-time funding amounts are not a part of the entity's base budget for the 2013-15 biennium. The department of public instruction, school for the deaf, and school for the blind - vision services shall report to the appropriations committees of the sixty-third legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 3. ONE-TIME FUNDING - EDUCATION JOBS FUNDS.** The federal education jobs funding of \$21,517,716 appropriated to the superintendent of public instruction in subdivision 1 of section 1 of this Act is one-time funding for the 2011-13 biennium. The superintendent of public instruction may not request funding from the general fund to replace this one-time funding in its base budget request for the 2013-15 biennium.

**SECTION 4. APPROPRIATION - STAGNET CONNECTIVITY - INFORMATION TECHNOLOGY DEPARTMENT.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$131,000, or so much of the sum as may be necessary, to the information technology department for the purpose of completing school district connectivity to STAGEnet, for the biennium beginning July 1, 2011, and ending June 30, 2013.



**SECTION 5. APPROPRIATION - SCHOLARSHIP PROGRAMS - 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 \$10,000,000, or so much of the sum as may be necessary, to the state board of higher education for the purpose of providing North Dakota academic and career and technical education scholarships, for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 6. APPROPRIATION.** There is appropriated from special funds derived from federal funds the sum of \$30,000,000, or so much of the sum as may be necessary, to the superintendent of public instruction for grants for the period beginning with the effective date of this Act and ending June 30, 2011.

**SECTION 7. APPROPRIATION - TUITION APPORTIONMENT.** The sum of \$101,638,000, included in the grants - state school aid 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, 2011, and ending June 30, 2013.

**SECTION 8. STATE SCHOOL AID AND SPECIAL EDUCATION CONTRACTS EXPENDITURE AUTHORITY.** The superintendent of public instruction may expend funds included in the grants - state school aid and grants - special education contracts line items in subdivision 1 of section 1 of this Act in payment of grants for educational services that were due in the 2009-11 biennium but which were not filed, claimed, or properly supported by the education provider until after June 30, 2011.

**SECTION 9. REGIONAL EDUCATION ASSOCIATIONS - GRANTS.** During the 2011-13 biennium, the superintendent of public instruction shall expend up to \$800,000 from the grants - state school aid line item in subdivision 1 of section 1 of this Act for the purpose of providing an annual grant to each eligible regional education association in order to assist each association with the cost of compensating a coordinator.

1. In order to receive a grant under this section, each regional education association must:
  - a. Enter a contract with an individual to serve as a coordinator, on a full-time or a part-time basis, for a duration of at least twelve months; and
  - b. Provide from other revenue sources at least thirty percent of the total compensation payable to the coordinator.
2. The maximum grant payable to a regional education association under this section during each year of the biennium is the lesser of \$50,000 or seventy percent of the total compensation payable to the coordinator.

**SECTION 10. RESERVED FUNDS - CONTINGENT ADULT EDUCATION LEARNING CENTER GRANTS.** The sum of \$500,000, or so much of the sum as may be necessary, made available under section 19 of this Act, must be used by the department of public instruction for providing adult education learning center grants, for the biennium beginning July 1, 2011, and ending June 30, 2013. The department may provide grants of up to \$250,000 during the first year of the biennium only if federal funding available to the state for adult education is less than \$900,000 in federal fiscal year 2012. Funding provided in the first year of the biennium is limited to the difference between federal funding available in federal fiscal year 2012 and

\$900,000. The department may use any remaining funds for adult education learning center grants during the second year of the biennium.

**SECTION 11. CONTINUING EDUCATION GRANTS - FUNDING - DISTRIBUTION.** The sum of \$100,000, or so much of the sum as may be necessary, included in the grants - other grants line item in subdivision 1 of section 1 of this Act is provided for continuing education grants, for the biennium beginning July 1, 2011, and ending June 30, 2013.

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. GIFTED AND TALENTED PROGRAM - MEDICAID MATCHING - FUNDING - DISTRIBUTION.**

1. The sum of \$800,000, included in the grants - state school aid 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 13. INDIRECT COST ALLOCATION.** Notwithstanding section 54-44.1-15, the department of public instruction may deposit indirect cost recoveries in its operating account.

**SECTION 14. STATE AID TO PUBLIC LIBRARIES.** The line item entitled grants in subdivision 2 of section 1 of this Act includes \$1,500,000 for aid to public libraries, of which no more than one-half is to be expended during the fiscal year ending June 30, 2012.

**SECTION 15. FEES DEPOSITED IN VISION SERVICES - SCHOOL FOR THE BLIND OPERATING FUND.** Any moneys included in the estimated income line item in subdivision 4 of section 1 of this Act, collected for subscription fees or braille fees, must be deposited in the North Dakota vision services - school for the blind operating fund in the state treasury and may be spent subject to appropriation by the legislative assembly.

**SECTION 16. SCHOOL FOR THE DEAF - EXEMPTION - TRANSFER.** Up to \$835,000 of the amount appropriated to the school for the deaf from the general fund, as provided in chapter 13 of the 2009 Session Laws, for the trades building remodeling project and not spent or obligated as of June 30, 2011, is not subject to the provisions of section 54-44.1-11 and shall be transferred by the director of the office of management and budget to the school for the deaf fund during the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 17. SCHOOL FOR THE DEAF - HIGHER EDUCATION INTERPRETER GRANT PROGRAM.** The grants line item contained 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, 2011, and ending June 30, 2013. Moneys appropriated for this program are not subject to section 54-44.1-11. Funds shall 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 a 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 18. AMENDMENT.** Section 54 of chapter 175 of the 2009 Session Laws is amended and reenacted as follows:

**SECTION 54. TRANSPORTATION GRANTS - DISTRIBUTION.**

1. During each year of the 2009-11 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. Ninety-two cents per mile for schoolbuses having a capacity of ten or more passengers;
  - b. Forty-four cents per mile for vehicles having a capacity of nine or fewer passengers; and
  - c. Twenty-four 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 the transportation formula as it existed on June 30, 2001.
3. If any moneys provided for transportation payments in the grants - transportation line item in the appropriation bill for the superintendent of public instruction, as approved by the sixty-first legislative assembly, remain after application of the formula provided for in this section, the superintendent of public instruction shall ~~prorate~~:
  - a. Reserve the first one million dollars, which is not subject to the provisions of section 54-44.1-11 and must be used to provide per student payments during the biennium beginning July 1, 2011, and ending June 30, 2013.
  - b. Prorate the remaining amounts according to the percentage of the total transportation formula amount to which each school district is entitled.
4. This section does not authorize the reimbursement of any costs incurred in providing transportation for student attendance at extracurricular activities or events.

**SECTION 19. AMENDMENT.** Section 59 of chapter 175 of the 2009 Session Laws is amended and reenacted as follows:

**SECTION 59. CONTINGENT MONEY - 2009-11.**

1. In determining the availability of contingent money under this section, the superintendent of public instruction shall first add to the money in the grants - state school aid line item in the appropriation bill for the superintendent of public instruction, as approved by the sixty-first legislative assembly, any money that was appropriated to the superintendent for special education contracts and which remains after the superintendent complied with all statutory special education contract payment obligations imposed for the biennium beginning July 1, 2009, and ending June 30, 2011.
2. If any money that was appropriated to the superintendent of public instruction for grants - state aid payments to school districts or added

to the grants - state school aid line item in accordance with subsection 1 remains after the superintendent complies with all statutory payment obligations imposed for the biennium beginning July 1, 2009, and ending June 30, 2011, the superintendent shall use:

- a. Reserve the first eight million dollars, which is not subject to the provisions of section 54-44.1-11 and must be used to provide per student payments during the biennium beginning July 1, 2011, and ending June 30, 2013.
- b. Reserve the next five hundred thousand dollars, which is not subject to the provisions of section 54-44.1-11 and must be used in accordance with section 10 of this Act.
- c. Use the money to provide additional per student payments on a prorated basis according to the latest available average daily membership of each school district.

**SECTION 20. TRANSFER - NATIONAL BOARD CERTIFICATION FUND - GENERAL FUND.** The office of management and budget shall transfer any balance remaining in the national board certification fund at the end of the 2011-13 biennium to the general fund. For purposes of this section, "at the end of the 2011-13 biennium" means after cancellation of unexpended appropriations under section 54-44.1-11.

**SECTION 21. LEGISLATIVE INTENT - 2013-15 SCHOOL FOR THE DEAF APPROPRIATION BILL.** It is the intent of the sixty-second legislative assembly that the school for the deaf remain under the control of the superintendent of public instruction during the 2011-13 biennium and that the governor include the recommended funding for the school for the deaf in a separate draft appropriations act for introduction to the sixty-third legislative assembly.

**SECTION 22. 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 ~~ninety five one hundred two thousand one~~ eight hundred sixteen ~~sixty-eight~~ dollars through June 30, ~~2010~~2012, and ~~ninety nine one hundred five thousand eight nine hundred seventy two~~ fifty-four dollars thereafter.

<sup>8</sup> **SECTION 23. REPEAL.** Section 15.1-13-33 of the North Dakota Century Code is repealed.

**SECTION 24. EMERGENCY.** Sections 6, 18, and 19 of this Act and \$21,517,716 appropriated in the education jobs fund line item in subdivision 1 of section 1 of this Act are declared to be an emergency measure.

Approved May 9, 2011  
Filed May 9, 2011

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<sup>8</sup> Section 15.1-13-33 was amended by section 1 of House Bill No. 1094, chapter 136.

## CHAPTER 40

### SENATE BILL NO. 2014

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

AN ACT to provide an appropriation for defraying the expenses of the committee on protection and advocacy.

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

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the committee on protection and advocacy for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2011, and ending June 30, 2013, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Total all funds	\$4,543,318	\$560,935	\$5,104,253
Less estimated income	<u>2,987,503</u>	<u>131,385</u>	<u>3,118,888</u>
Total general fund	\$1,555,815	\$429,550	\$1,985,365
Full-time equivalent positions	28.50	0.00	28.50

Approved May 9, 2011  
Filed May 9, 2011

## CHAPTER 41

### SENATE BILL NO. 2015

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

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, the superintendent of public instruction, the state board of higher education, and the department of human services; to create and enact a new section to chapter 48-01.2, a new subdivision to subsection 1 of section 54-10-14, and a new section to chapter 54-27 of the North Dakota Century Code and a new section to House Bill No. 1185, a new section to Senate Bill No. 2083, and a new subdivision to subsection 6 of section 1 of House Bill No. 1438, as approved by the sixty-second legislative assembly, relating to public improvement bids and contracts, entities required to be audited by the state auditor, a report on federal grants, an emergency declaration, and an employer's prohibition on firearm possession; to amend and reenact section 39-02-03, subdivision a of subsection 2 of section 54-03-20, and sections 54-16-03.1 and 54-35-02.3 of the North Dakota Century Code and sections 1 and 8 of House Bill No. 1014 and sections 1 and 8 of House Bill No. 1020, as approved by the sixty-second legislative assembly, relating to the powers and duties of the director of the department of transportation, housing reimbursement for members of the legislative assembly, petitions to the emergency commission, legislative management employee benefits programs committee, appropriations for the industrial commission, and appropriations to the branch research centers; to provide an exemption; to provide for various transfers; to provide legislative intent; to provide for legislative management reports; 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 management and budget for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2011, and ending June 30, 2013, as follows:

<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>	
Salaries and wages	\$17,203,386	\$1,314,377	\$18,517,763
Operating expenses	13,363,053	402,201	13,765,254
Emergency commission contingency fund	0	700,000	700,000
Capital assets	2,420,298	6,369,845	8,790,143
Grants	430,000	(375,000)	55,000
Prairie public broadcasting	1,337,138	(337,138)	1,000,000
State student internship program	200,000	0	200,000
Statewide equity plan	<u>15,984,000</u>	<u>(15,984,000)</u>	<u>0</u>
Total all funds	\$50,937,875	(\$7,909,715)	\$43,028,160
Less estimated income	<u>14,688,779</u>	<u>(4,174,318)</u>	<u>10,514,461</u>

Total general fund	\$36,249,096	(\$3,735,397)	\$32,513,699
Full-time equivalent positions	132.50	(1.00)	131.50

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-THIRD LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-first legislative assembly for the 2009-11 biennium and the 2011-13 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2009-11</u>	<u>2011-13</u>
Prairie public broadcasting	\$2,016,200	\$0
ConnectND	1,000,000	0
Facility management repairs and equipment	2,850,000	0
Administration projects	126,041	0
Federal fiscal stimulus	689,494	0
Capital envelope	0	2,800,000
Capitol complex parking lot repairs	0	800,000
North Dakota 125 anniversary coordinator	0	50,000
Total all funds	\$6,681,735	\$3,650,000
Less estimated income	<u>1,823,635</u>	<u>0</u>
Total general fund	\$4,858,100	\$3,650,000

The 2011-13 one-time funding amounts are not a part of the entity's base budget for the 2013-15 biennium. The office of management and budget shall report to the appropriations committees of the sixty-third legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 3. APPROPRIATION - TRANSFER - GENERAL FUND TO PUBLIC TRANSPORTATION FUND.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$100,000, which the office of management and budget shall transfer to the public transportation fund during the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 4. TRANSFER TO GENERAL FUND FROM STRATEGIC INVESTMENT AND IMPROVEMENTS FUND.** During the biennium beginning July 1, 2011, and ending June 30, 2013, the director of the office of management and budget shall transfer \$305,000,000 from the strategic investment and improvements fund to the general fund.

**SECTION 5. EXEMPTION.** The amount appropriated for the fiscal management division, as contained in section 1 of chapter 15 of the 2009 Session Laws is not subject to the provisions of section 54-44.1-11. Any unexpected funds from this appropriation are available for continued development and operating costs of the accounting, management, and payroll systems, during the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 6. INTENT.** Within the authority included in section 1 of this Act are the following grants and special items:

Boys and girls clubwork	\$53,000
State memberships and related expenses	\$611,000
Unemployment insurance	\$1,500,000
Capitol grounds planning commission	\$25,000

**SECTION 7. STATE STUDENT INTERNSHIP PROGRAM.** The human resources division of the office of management and budget may transfer to each eligible agency



appropriated general fund spending authority from the state internship program line item contained in section 1 of this Act.

**SECTION 8. STATE EMPLOYEE COMPENSATION ADJUSTMENTS - GUIDELINES.** It is the intent of the sixty-second legislative assembly that 2011-13 biennium compensation adjustments for regular nonclassified state employees are to be based on documented performance and equity and are not to be the same percentage increase for each employee. Compensation adjustments for the 2011-13 biennium for regular classified state employees are to be based on guidelines developed by the office of management and budget in accordance with section 10 of this Act.

General increases based on legislative appropriations are to be given beginning with the month of July 2011, to be paid in August 2011, and beginning with the month of July 2012, to be paid in August 2012. Each agency appropriation is increased by three percent for the first year of the 2011-13 biennium and three percent for the second year of the 2011-13 biennium. Employees whose overall documented performance level does not meet standards are not eligible for any salary increase.

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

**SECTION 9. EXTERNAL COMPETITIVENESS TARGET - CLASSIFIED STATE EMPLOYEE COMPENSATION ADJUSTMENT GUIDELINES - 2011-13 BIENNIUM.** The office of management and budget shall set the external competitiveness target for the classified state employee compensation system based on the funding provided by the sixty-second legislative assembly for classified state employee compensation, for the biennium beginning July 1, 2011, and ending June 30, 2013. The office of management and budget shall develop guidelines for use by state agencies for providing compensation adjustments for regular classified state employees, for the biennium beginning July 1, 2011, and ending June 30, 2013. The guidelines must be developed in accordance with the compensation philosophy statement and compensation system initiatives included in House Bill No. 1031, as approved by the sixty-second legislative assembly, and the external competitiveness target as determined by the office of management and budget.

**SECTION 10. OFFICE OF MANAGEMENT AND BUDGET - REPORTS TO LEGISLATIVE MANAGEMENT - STATE EMPLOYEE COMPENSATION SYSTEM CHANGES.** The office of management and budget shall provide periodic reports to the legislative management during the 2011-12 interim on the status of implementation and administration of the compensation philosophy statement and compensation system initiatives included in House Bill No. 1031, as approved by the sixty-second legislative assembly.

**SECTION 11. INFORMATION TECHNOLOGY PROJECT PLANNING.** Each executive branch state agency, excluding entities under the control of the state board of higher education, considering the development of an information technology project with an estimated cost of \$100,000 or more shall involve the information technology department in the planning and study of the project, for the biennium beginning July 1, 2011, and ending June 30, 2013. A state agency must receive a recommendation from the information technology department prior to proceeding with any study relating to the project.

**\*SECTION 12. DRAFT APPROPRIATIONS ACTS - ALTERNATIVE FORMAT PILOT PROJECT - SIXTY-THIRD LEGISLATIVE ASSEMBLY - EXCEPTION.** Notwithstanding subsection 7 of section 54-44.1-06, the draft of proposed appropriations acts submitted by the governor for introduction to the sixty-third legislative assembly for the highway patrol, protection and advocacy project, secretary of state, and public service commission must be at the same level of ongoing funding as provided by the sixty-second legislative assembly. The governor shall attach a proposed draft amendment to the draft appropriations acts for these agencies making the funding changes necessary to provide for the appropriations as recommended by the governor, for the biennium beginning July 1, 2013, and ending June 30, 2015.

**SECTION 13. DEPARTMENT OF TRANSPORTATION MOTOR VEHICLE BRANCH OFFICE AUTHORIZATION.** Notwithstanding any other provision of law, the department of transportation is authorized to design and procure or construct additional office space, including modular buildings or onsite construction, for use as a motor vehicle branch office, for the period beginning with the effective date of this Act and ending June 30, 2013.

**SECTION 14. APPROPRIATION - DEPARTMENT OF HUMAN SERVICES.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$1,474,362, or so much of the sum as may be necessary, to the department of human services for the purpose of completing the medicaid management information system replacement project, for the biennium beginning July 1, 2011, and ending June 30, 2013. This funding is considered to be one-time funding for the 2011-13 biennium and is not to be part of the department's base budget for the 2013-15 biennium. The department shall report to the appropriations committees of the sixty-third legislative assembly on the use of this one-time funding.

**SECTION 15. AMENDMENT.** Section 1 of House Bill No. 1014, as approved by the sixty-second 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 state industrial commission and agencies under its control for the purpose of defraying the expenses of the state industrial commission and agencies under its control, for the biennium beginning July 1, 2011, and ending June 30, 2013, as follows:

Subdivision 1.

INDUSTRIAL COMMISSION

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$9,321,995	\$2,889,625	\$12,211,620
Operating expenses	2,646,426	847,318	3,493,744
Capital assets	49,000	(49,000)	0
Grants - Lignite research and development	19,971,300	0	19,971,300
Grants - Bond payments	27,441,865	(2,052,132)	25,389,733
Mineral resources contingency	0	743,972	743,972
Carbon dioxide storage facility	0	532,000	532,000

administrative fund			
Renewable energy development	<u>0</u>	<u>1,500,000</u>	<u>1,500,000</u>
Total all funds	\$59,430,586	\$4,411,783	\$63,842,369
Less estimated income	<u>49,308,484</u>	<u>(1,797,756)</u>	<u>47,510,728</u>
Total general fund	\$10,122,102	\$6,209,539	\$16,331,641
Less estimated income	<u>49,308,484</u>	<u>(2,541,728)</u>	<u>46,766,756</u>
Total general fund	\$10,122,102	\$6,953,511	\$17,075,613
Full-time equivalent positions	61.06	13.00	74.06

Subdivision 2.

#### BANK OF NORTH DAKOTA - OPERATIONS

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Bank of North Dakota operations	\$41,762,274	\$3,824,881	\$45,587,155
Capital assets	<u>1,455,000</u>	<u>(189,000)</u>	<u>1,266,000</u>
Total special funds	\$43,217,274	\$3,635,881	\$46,853,155
Full-time equivalent positions	176.50	0.00	176.50

Subdivision 3.

#### BANK OF NORTH DAKOTA - ECONOMIC DEVELOPMENT

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Partnership in assisting community expansion fund	\$8,000,000	(\$2,000,000)	\$6,000,000
Agriculture partnership in assisting community expansion fund	1,400,000	(400,000)	1,000,000
Beginning farmer revolving loan fund	950,000	450,000	1,400,000
Biofuels partnership in assisting community expansion fund	<u>0</u>	<u>1,000,000</u>	<u>1,000,000</u>
Total all funds	\$10,350,000	(\$950,000)	\$9,400,000
Less beginning farmer revolving loan fund	<u>950,000</u>	<u>(950,000)</u>	<u>0</u>
Total general fund	\$9,400,000	\$0	\$9,400,000

Subdivision 4.

#### MILL AND ELEVATOR ASSOCIATION

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$22,599,324	\$3,418,684	\$26,018,008
Operating expenses	16,982,918	3,460,951	20,443,869
Contingencies	325,000	75,000	400,000
Agriculture promotion	<u>150,000</u>	<u>60,000</u>	<u>210,000</u>
Total from mill and elevator fund	\$40,057,242	\$7,014,635	\$47,071,877
Full-time equivalent positions	131.00	0.00	131.00

Subdivision 5.

HOUSING FINANCE AGENCY

	Base Level	Adjustments or Enhancements	Appropriation
Salaries and wages	\$5,981,828	\$534,449	\$6,516,277
Operating expenses	8,677,581	(3,562,732)	5,114,849
Grants	26,224,360	634,560	26,858,920
Housing finance agency contingencies	<u>100,000</u>	<u>0</u>	<u>100,000</u>
Total special funds	\$40,983,769	(\$2,393,723)	\$38,590,046
Full-time equivalent positions	46.00	0.00	46.00

Subdivision 6.

BILL TOTAL

	Base Level	Adjustments or Enhancements	Appropriation
<del>Grand total general fund</del>	<del>\$19,522,102</del>	<del>\$6,209,539</del>	<del>\$25,731,641</del>
<del>Grand total special funds</del>	<del>174,516,769</del>	<del>5,509,037</del>	<del>180,025,806</del>
<del>Grand total general fund</del>	<del>19,522,102</del>	<del>6,953,511</del>	<del>26,475,613</del>
<del>Grand total special funds</del>	<del>174,516,769</del>	<del>4,765,065</del>	<del>179,281,834</del>
Grand total all funds	\$194,038,871	\$11,718,576	\$205,757,447

**SECTION 16. AMENDMENT.** Section 8 of House Bill No. 1014, as approved by the sixty-second legislative assembly, is amended and reenacted as follows:

**SECTION 8. CONTINGENT DEPARTMENT OF MINERAL RESOURCES FUNDING — PERMANENT OIL TAX TRUST FUND - EMERGENCY COMMISSION APPROVAL.**

Of the funds appropriated in the mineral resources contingency line item in subdivision 1 of section 1 of this Act, \$743,972 is from the ~~permanent oil tax trust~~ general fund. If funds are required due to the drilling rig count exceeding one hundred eighty for at least thirty consecutive days, the oil and gas division may spend up to \$192,393 of these funds and hire one full-time equivalent position, upon emergency commission approval, and further if funds are required due to the drilling rig count exceeding one hundred ninety for at least thirty consecutive days, the oil and gas division may spend up to an additional \$192,393 of these funds and hire one full-time equivalent position, upon emergency commission approval. If funds are required due to the total number of oil wells in the state exceeding nine thousand three hundred, the oil and gas division may spend up to \$359,186 and hire two full-time equivalent positions, upon emergency commission approval.

**SECTION 17. AMENDMENT.** Section 1 of House Bill No. 1020, as approved by the sixty-second 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 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, 2011, and ending June 30, 2013, as follows:

Subdivision 1.

NORTH DAKOTA STATE UNIVERSITY EXTENSION SERVICE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Extension service	\$47,091,489	(\$64,835)	\$47,026,654
Soil conservation committee	837,800	150,000	987,800
Total all funds	\$47,929,289	\$85,165	\$48,014,454
Less estimated income	<u>25,928,877</u>	<u>(2,800,067)</u>	<u>23,128,810</u>
Total general fund	\$22,000,412	\$2,885,232	\$24,885,644
Full-time equivalent positions	255.75	1.00	256.75

Subdivision 2.

NORTHERN CROPS INSTITUTE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Total all funds	\$3,037,486	\$309,821	\$3,347,307
Less estimated income	<u>1,598,265</u>	<u>56,460</u>	<u>1,654,725</u>
Total general fund	\$1,439,221	\$253,361	\$1,692,582
Full-time equivalent positions	11.00	0.00	11.00

Subdivision 3.

UPPER GREAT PLAINS TRANSPORTATION INSTITUTE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Total all funds	\$23,326,992	\$742,969	\$24,069,961
Less estimated income	<u>21,737,199</u>	<u>413,134</u>	<u>22,150,333</u>
Total general fund	\$1,589,793	\$329,835	\$1,919,628
Full-time equivalent positions	52.30	0.00	52.30

Subdivision 4.

MAIN RESEARCH CENTER

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Main research center	\$87,530,418	\$11,059,555	\$98,589,973
Deferred maintenance	0	0	0
Grape and wine program committee	0	0	0
Federal fiscal stimulus 2009	<u>0</u>	<u>0</u>	<u>0</u>
Total all funds	\$87,530,418	\$11,059,555	\$98,589,973
Less estimated income	<u>45,013,267</u>	<u>(879,692)</u>	<u>44,133,575</u>
Total general fund	\$42,517,151	\$11,939,247	\$54,456,398
Full-time equivalent positions	329.26	4.00	333.26

## Subdivision 5.

## RESEARCH CENTERS

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Dickinson research center	\$5,012,580	\$1,375,982	\$6,388,562
Central grasslands research center	2,560,602	305,245	2,865,847
Hettinger research center	2,995,155	378,020	3,373,175
Langdon research center	2,091,572	287,235	2,378,807
North central research center	3,973,952	425,869	4,399,821
Williston research center	2,922,183	487,906	3,410,089
Carrington research center	<u>6,727,962</u>	<u>398,526</u>	<u>7,126,488</u>
Total all funds	\$26,284,006	\$3,658,783	\$29,942,789
Less estimated income	<u>13,916,816</u>	<u>1,880,765</u>	<u>15,797,581</u>
Total general fund	\$12,367,190	\$1,778,018	\$14,145,208
Less estimated income	<u>13,916,816</u>	<u>1,080,765</u>	<u>14,997,581</u>
Total general fund	\$12,367,190	\$2,578,018	\$14,945,208
Full-time equivalent positions	95.49	2.00	97.49

## Subdivision 6.

## AGRONOMY SEED FARM

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Agronomy seed farm	\$1,275,238	\$159,930	\$1,435,168
Total special funds	\$1,275,238	\$159,930	\$1,435,168
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>
Grand total general fund	\$79,913,767	\$17,185,693	\$97,099,460
Grand total special funds	<u>109,469,662</u>	<u>(1,169,470)</u>	<u>108,300,192</u>
Grand total general fund	\$79,913,767	\$17,985,693	\$97,899,460
Grand total special funds	<u>109,469,662</u>	<u>(1,969,470)</u>	<u>107,500,192</u>
Grand total all funds	\$189,383,429	\$16,016,223	\$205,399,652

**SECTION 18. AMENDMENT.** Section 8 of House Bill No. 1020, as approved by the sixty-second legislative assembly, is amended and reenacted as follows:

**SECTION 8. PERMANENT OIL TAX TRUST FUND — DICKINSON RESEARCH CENTER - OPERATING POOL FUNDING.** The estimated income general fund line item in subdivision 5 of section 1 of this Act includes \$800,000 from the permanent oil tax trust fund. This operating pool funding is available only for defraying the costs of operations of the Dickinson research center, for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 19. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$211,264, or so much of the sum as may be necessary, to the superintendent of public instruction for the purpose of allocation of mill levy reduction grants to school districts under

chapter 57-64, for the period beginning with the effective date of this Act and ending June 30, 2011.

**SECTION 20. APPROPRIATION - 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 \$150,000, or so much of the sum as may be necessary, to the state board of higher education for the purpose of supporting educational leadership programs at the university of North Dakota and North Dakota state university, for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 21.** A new section to House Bill No. 1185, as approved by the sixty-second legislative assembly, is created and enacted as follows:

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

<sup>9</sup> **SECTION 22.** A new subdivision to subsection 6 of section 1 of House Bill No. 1438, as approved by the sixty-second legislative assembly, is created and enacted as follows:

The state hospital.

**SECTION 23.** A new section to Senate Bill No. 2083, as approved by the sixty-second legislative assembly, is created and enacted as follows:

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

**SECTION 24. AMENDMENT.** Section 39-02-03 of the North Dakota Century Code is amended and reenacted as follows:

**39-02-03. Powers and duties of director and department.**

The director, subject to the approval of the governor, may adopt and enforce such administrative rules and designate such agencies and establish such branch offices as may be necessary to carry out the laws applicable to the director's office and department. The director shall provide suitable forms for applications, registration cards, license number plates, and all other forms requisite for the operation of the director's office and department, and shall prepay all transportation charges thereon. In addition, the director shall provide for a uniform maximum fee schedule for the various services provided by the branch offices. Any branch office may establish a different fee schedule if the schedule does not contain a fee that exceeds a maximum fee established by the director and is approved by the director. All branch office managers must be bonded. The department may lease or provide office space or other overhead costs as necessary to independent motor vehicle branch managers. All rents collected under this section must be deposited in the state highway fund. The department and the officers thereof shall enforce the provisions of all laws pertaining to the director and the department.

**\*SECTION 25.** A new section to chapter 48-01.2 of the North Dakota Century Code is created and enacted as follows:

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<sup>9</sup> Section 62.1-02-13 was created by section 1 of House Bill No. 1438, chapter 503.

**Bids less than authorized project amount - Additional expense approval - Budget section report.**

Upon accepting a bid under this chapter, if the accepted bid is less than all funds dedicated to the public improvement, the governing body of an entity that has received an appropriation of moneys from the general fund of the state treasury for the public improvement shall immediately notify the office of management and budget. Any change order or expenses exceeding the bid amount must be submitted to the office of management and budget for approval. The office of management and budget shall report all approved change orders or additional expenses to the budget section of the legislative management.

<sup>10</sup> **SECTION 26. AMENDMENT.** Subdivision a of subsection 2 of section 54-03-20 of the North Dakota Century Code is amended and reenacted as follows:

- 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 ~~fifty-five~~<sup>sixty-five</sup> percent of the daily lodging reimbursement in effect on that date as provided under subdivision d of subsection 2 of section 44-08-04.

<sup>11</sup> **SECTION 27.** A new subdivision to subsection 1 of section 54-10-14 of the North Dakota Century Code as amended by section 1 of House Bill No. 1145, as approved by the sixty-second legislative assembly, is created and enacted as follows:

Housing authorities not required to be audited by the federal department of housing and urban development.

**SECTION 28. AMENDMENT.** Section 54-16-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**54-16-03.1. Submission of petition to emergency commission.**

When an emergency exists, a state officer may present to the emergency commission an itemized petition requesting approval to transfer money and spending authority between funds or line items pursuant to section 54-16-04; accept and expend federal funds pursuant to section 54-16-04.1; accept and expend state contingency funds pursuant to section 54-16-09; accept and expend other funds pursuant to section 54-16-04.2; or recommend full-time equivalent positions pursuant to section 54-16-04.3. Any petition to the emergency commission by a state officer must be approved or recommended by the emergency commission prior to submission for consideration by the budget section.

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<sup>10</sup> Section 54-03-20 was also amended by section 8 of House Bill No. 1001, chapter 1.

<sup>11</sup> Section 54-10-14 was also amended by section 1 of House Bill No. 1145, chapter 394.



**SECTION 29.** A new section to chapter 54-27 of the North Dakota Century Code is created and enacted as follows:

**Report on federal grants by state agency.**

Each state agency, excluding entities under the control of the state board of higher education, shall report to the office of management and budget before applying for a federal grant for which the agency may receive estimated funding of twenty-five thousand dollars or more. The report must include the purpose of the grant; the potential amount of the grant; any additional employees that may be required because of the grant; the time period covered by the grant; and grant requirements, including state matching requirements or maintenance of effort. The state agency shall provide updates on the status of the grant application as required by the office of management and budget. At each meeting of the budget section of the legislative management, the office of management and budget shall report to the budget section on the reports received from state agencies under this section.

**SECTION 30. AMENDMENT.** Section 54-35-02.3 of the North Dakota Century Code is amended and reenacted as follows:

**54-35-02.3. Employee benefits programs committee - Appointment - Selection of chairman.**

The legislative management, during each biennium, shall appoint an employee benefits programs committee in the same manner as the legislative management appoints other interim committees. The legislative management shall appoint ~~five~~seven members of the house of representatives and ~~four~~six members of the senate to the committee. The legislative management shall designate the chairman of the committee. The committee shall operate according to the statutes and procedure governing the operation of other legislative management interim committees.

**\*SECTION 31. DEPARTMENT OF COMMERCE - TOURISM INFRASTRUCTURE GRANTS - EMERGENCY COMMISSION AND BUDGET SECTION APPROVAL.** Funding provided to the department of commerce for tourism infrastructure grants in Senate Bill No. 2057, as approved by the sixty-second legislative assembly, may be awarded and spent only upon emergency commission and budget section approval, for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 32. EMERGENCY.** Sections 13, 19, 21, 23, and 24 of this Act are declared to be an emergency measure.

Approved May 18, 2011  
Filed May 18, 2011

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\* Sections 12, 25, and 31 of Senate Bill No. 2015 were vetoed, see chapter 515.

## CHAPTER 42

### SENATE BILL NO. 2016

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

AN ACT to provide an appropriation for defraying the expenses of the office of the adjutant general; to provide appropriations; to provide for transfers; to provide exemptions; to amend and reenact section 37-17.3-08 of the North Dakota Century Code, relating to state radio fees; to provide 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 office of the adjutant general for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2011, and ending June 30, 2013, as follows:

##### Subdivision 1.

#### NATIONAL GUARD

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$4,841,436	\$312,450	\$5,153,886
Operating expenses	3,676,891	386,000	4,062,891
Capital assets	223,670	331,082	554,752
Grants	449,514	60,000	509,514
Civil air patrol	222,836	20,517	243,353
Tuition, recruiting, and retention	2,407,500	0	2,407,500
Air guard contract	9,551,543	1,437,780	10,989,323
Army guard contract	60,058,099	(3,947,342)	56,110,757
Reintegration program	1,377,409	172,740	1,550,149
Veterans' cemetery	489,141	87,775	576,916
Total all funds	\$83,298,039	(\$1,138,998)	\$82,159,041
Less estimated income	<u>67,337,232</u>	<u>(1,615,330)</u>	<u>65,721,902</u>
Total general fund	\$15,960,807	\$476,332	\$16,437,139

##### Subdivision 2.

#### DEPARTMENT OF EMERGENCY SERVICES

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$9,383,605	\$1,980,139	\$11,363,744
Operating expenses	4,102,057	5,827,965	9,930,022
Capital assets	492,000	1,935,347	2,427,347
Grants	44,402,267	27,017,504	71,419,771
2009 flood disaster	0	52,923,008	52,923,008

Radio communications	<u>0</u>	<u>3,735,000</u>	<u>3,735,000</u>
Total all funds	\$58,379,929	\$93,418,963	\$151,798,892
Less estimated income	<u>52,550,869</u>	<u>86,331,607</u>	<u>138,882,476</u>
Total general fund	\$5,829,060	\$7,087,356	\$12,916,416

Subdivision 3.

**BILL TOTAL**

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$21,789,867	\$7,563,688	\$29,353,555
Grand total special funds	<u>119,888,101</u>	<u>110,716,277</u>	<u>230,604,378</u>
Grand total all funds	\$141,677,968	\$118,279,965	\$259,957,933
Full-time equivalent positions	232.00	10.00	242.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-THIRD LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-first legislative assembly for the 2009-11 biennium and the 2011-13 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2009-11</u>	<u>2011-13</u>
Motorola lease purchase payment	\$1,525,347	\$1,525,347
Message switch upgrades	0	235,000
Central electronics bank dispatch system	0	1,100,000
Veterans' bonus multiple deployments	500,000	0
Technology projects	3,600,000	100,000
Technology equipment and software purchases	160,000	0
Tornado disaster grants	250,000	0
Snow removal grants	20,000,000	0
2009 flood disaster	105,500,000	0
Volunteer management grants	400,000	0
2009 federal fiscal stimulus	3,783,770	0
State radio tower package	0	1,500,000
Statewide seamless base map	0	900,000
Military service center east	0	72,700
Armory grants	0	60,000
Extraordinary repairs	<u>0</u>	<u>325,381</u>
Total all funds	\$135,719,117	\$5,818,428
Less estimated income	<u>116,783,770</u>	<u>500,000</u>
Total general fund	\$18,935,347	\$5,318,428

The 2011-13 one-time funding amounts are not a part of the entity's base budget for the 2013-15 biennium. The adjutant general shall report to the appropriations committees of the sixty-third legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 3. APPROPRIATION - FLOOD-RELATED COSTS.** There is appropriated from special funds derived from federal funds or other income the sum of \$22,500,000, or so much of the sum as may be necessary, to the adjutant general for the purpose of defraying expenses relating to 2011 flood disasters, for the period beginning with the effective date of this Act through June 30, 2013.

**SECTION 4. 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 which 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, 2011, and ending June 30, 2013.

**SECTION 5. STATE DISASTER RELIEF FUND - APPROPRIATION.** In addition to the amount appropriated to the adjutant general in subdivision 2 of section 1 of this Act, there is appropriated out of any moneys in the state disaster relief fund, not otherwise appropriated, the sum of \$3,500,000, or so much of the sum as may be necessary, to the adjutant general for the purpose of providing the required state share of funding for defraying the expenses associated with presidential-declared state disasters pursuant to section 37-17.1-27.

**SECTION 6. MAINTENANCE AND REPAIRS - TRANSFERS.** The adjutant general may transfer to the operating expenses and capital assets line items contained in section 1 of this Act up to the sum of \$500,000 from the various other line items contained in section 1 of this Act, as determined necessary by the adjutant general to provide for the maintenance and repair of state-owned armories in this state during the biennium beginning July 1, 2011, and ending June 30, 2013. Any amounts transferred pursuant to this section must be reported to the director of the office of management and budget.

**SECTION 7. EXEMPTION.** Any amounts carried over pursuant to section 3 of chapter 312 of the 2009 Session Laws that is unexpended as of June 30, 2011, is not subject to section 54-44.1-11 and is 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, 2013, and ending June 30, 2015.

**SECTION 8. EXEMPTION.** The amount appropriated in the capital assets line for the next generation 911 study, the state radio tower study, and for a new state radio tower site near Wales in section 1, subdivision 2, of chapter 16 of the 2009 Session Laws is not subject to section 54-44.1-11 and any unexpended funds from this line item are available for conducting the next generation 911 study and the state radio tower study and for state radio tower enhancements or additions during the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 9. AMENDMENT.** Section 37-17.3-08 of the North Dakota Century Code is amended and reenacted as follows:

**37-17.3-08. State radio system and service fees.**

1. The director shall establish the appropriate fees for access to the state radio system and the service provided to local government users of the mobile data terminal system and North Dakota law enforcement telecommunications systems and other such systems that may be employed that enhance public safety. Changes to fees charged by the division, including schedule of charges for counties and cities, will take effect on July first. The director shall announce any fee increases a minimum of one year ~~prior to~~before the effective date. When the director considers an adjustment, as a part of the process the director shall consult with representatives of state and local units of government ~~prior to~~before setting fees. The director may consider economic conditions and the general economy when setting fees. The director shall

deposit all revenue obtained under this chapter with the state treasurer for deposit in the state radio broadcasting system operating account. The state radio broadcasting system operating account must be expended pursuant to legislative appropriation for the operation and maintenance of the system. ~~Fee structures will include:~~

- ~~1-2. Mobile data terminal fees.~~ The division shall establish and charge fees to provide mobile data terminal service to interested local law enforcement agencies except for local law enforcement agencies using private commercial access to the state message switch. The fees must be based on actual costs incurred by the division for providing the service and will be levied on a per system user basis. State general fund agencies that access the system will not incur any fees for the service.
- ~~2-3.~~ Each county and city law enforcement department that accesses the North Dakota teletype system shall pay a fee based upon fifty percent of the actual costs incurred by the division for providing the service. Fees will be levied on a per terminal basis. Other law enforcement affiliated organizations and federal agencies will pay one hundred percent of the actual costs incurred by the division for providing the service. Fees will be levied on a per terminal basis. State general fund agencies that access the system will not incur any fees for the service. City and county law enforcement fees will be based on the following schedule of charges per terminal:
- a. County population of less than five thousand shall pay ~~thirty~~forty dollars per month.
  - b. County population of five thousand or more but less than ten thousand shall pay ~~sixty~~eighty dollars per month.
  - c. County population of ten thousand or more but less than fifteen thousand shall pay ~~ninety~~one hundred twenty dollars per month.
  - d. County population of fifteen thousand or more but less than twenty-five thousand shall pay one hundred ~~twenty~~sixty dollars per month.
  - e. County population of twenty-five thousand or more shall pay ~~one~~two hundred ~~sixty~~ dollars per month.

**SECTION 10. LEGISLATIVE INTENT - STATE RADIO TOWER PACKAGE.** It is the intent of the sixty-second legislative assembly that the adjutant general work with other public agencies and private sector entities to maximize the number of state radio tower enhancements or additions that may be implemented within the funding appropriated in subdivision 2 of section 1 of this Act, for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 11. EMERGENCY.** Sections 3 and 5 of this Act are declared to be an emergency measure.

Approved May 5, 2011  
Filed May 5, 2011

## CHAPTER 43

### SENATE BILL NO. 2017

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

AN ACT to provide an appropriation for defraying the expenses of the game and fish department; to provide for a transfer; to provide 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 game and fish fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the game and fish department for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2011, and ending June 30, 2013, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$21,580,287	\$2,438,741	\$24,019,028
Operating expenses	12,800,000	(275,507)	12,524,493
Capital assets	3,965,000	218,170	4,183,170
Grants	6,544,000	1,174,500	7,718,500
Land habitat and deer	11,080,162	1,824,524	12,904,686
Noxious weed control	550,000	50,000	600,000
Missouri River enforcement	0	200,000	200,000
Grants, gifts, and donations	400,000	400,000	800,000
Nongame wildlife conservation	120,000	0	120,000
Lonetree reservoir	1,655,689	93,376	1,749,065
Wildlife services	<u>768,800</u>	<u>100,000</u>	<u>868,800</u>
Total special funds	\$59,463,938	\$6,223,804	\$65,687,742
Full-time equivalent positions	157.00	0.00	157.00

**SECTION 2. APPROPRIATION - 2009-11 BIENNIUM WILDLIFE SERVICES - AGRICULTURE COMMISSIONER - LEGISLATIVE INTENT.** There is appropriated out of any moneys in the game and fish 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 game and fish department for the purpose of providing funds to the agriculture commissioner for the payment of wildlife services, for the period beginning with the effective date of this Act and ending June 30, 2011. It is the intent of the sixty-second legislative assembly that the funding provided in this section is from the estimated savings to the game and fish department resulting from the reduction in property tax liability resulting from provisions of Senate Bill No. 2199 approved by the sixty-first legislative assembly.

**SECTION 3. APPROPRIATION - TRANSFER - GENERAL FUND - GAME AND FISH FUND.** There is appropriated out of any moneys in the general fund, not otherwise appropriated, the sum of \$300,000 which the office of management and budget shall transfer to the game and fish fund to be provided to the agriculture commissioner, for the biennium beginning July 1, 2011, and ending June 30, 2013. Of

the funding provided in this section, \$199,461 relates to expenses of the state board of animal health and \$100,539 relates to the wildlife services program.

**SECTION 4. GRANTS, GIFTS, AND DONATIONS LINE.** 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 department-managed properties as a result of mineral exploration and extraction activities.

**SECTION 5. MISSOURI RIVER ENFORCEMENT.** The Missouri River enforcement line item in section 1 of this Act includes the sum of \$200,000 for salaries and operating expenses of department employees coordinating or performing Missouri River law enforcement activities and for grants to local law enforcement agencies performing Missouri River law enforcement activities. The department may not use any of the funds for the purchase of equipment with a cost of \$3,000 or more.

**SECTION 6. EMERGENCY.** Funding of \$400,000 included in the grants line item in section 1 of this Act for a grant to the parks and recreation department for costs associated with the project to raise the elevation of the Grahams Island state park access road, funding of \$850,000 included in the land habitat and deer line item in section 1 of this Act relating to hunting access and deer depredation, and section 2 of this Act are declared to be an emergency measure.

Approved May 9, 2011  
Filed May 9, 2011

## CHAPTER 44

### SENATE BILL NO. 2018

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

AN ACT to provide an appropriation for defraying the expenses of the state historical society.

#### 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 that agency, for the biennium beginning July 1, 2011, and ending June 30, 2013, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$8,368,675	\$1,168,985	\$9,537,660
Operating expenses	2,284,210	393,706	2,677,916
Capital assets	2,549,712	286,024	2,835,736
Grants	1,000,000	25,000	1,025,000
Cultural heritage grants	504,500	0	504,500
Yellowstone-Missouri-Fort Union Commission	<u>4,492</u>	<u>0</u>	<u>4,492</u>
Total all funds	\$14,711,589	\$1,873,715	\$16,585,304
Less estimated income	<u>3,658,837</u>	<u>(108,424)</u>	<u>3,550,413</u>
Total general fund	\$11,052,752	\$1,982,139	\$13,034,891
Full-time equivalent positions	62.00	1.00	63.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-THIRD LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-first legislative assembly for the 2009-11 biennium and the 2011-13 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2009-11</u>	<u>2011-13</u>
Marketing \$75,000	\$75,000	
New exhibit development	330,000	90,000
Compact shelving for archives	350,000	0
Heritage center expansion	51,700,000	0
Repairs and small capital projects	666,500	475,000
Federal stimulus funds - 2009	685,000	0
Database migration	0	30,900
Temporary staff	0	59,800
Business analysis	0	10,000
North Dakota eighth grade curriculum	0	125,000
State's 125 <sup>th</sup> celebration planning	<u>0</u>	<u>50,000</u>
Total all funds	\$53,806,500	\$915,700
Less estimated income	<u>12,685,000</u>	<u>0</u>
Total general fund	\$41,121,500	\$915,700



The 2011-13 one-time funding amounts are not a part of the entity's base budget for the 2013-15 biennium. The state historical society shall report to the appropriations committees of the sixty-third legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2011, and ending June 30, 2013.

**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 provided in chapter 55-03, for the biennium beginning July 1, 2011, and ending June 30, 2013.

**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, 2011, and ending June 30, 2013.

**SECTION 5. STATE ONSITE PROJECT MANAGER - HERITAGE CENTER ADDITION PROJECT.** Notwithstanding section 55-01-02.1, the director of the facility management division of the office of management and budget shall serve as the state onsite project manager for the heritage center addition project until completion of the project. The state onsite project manager has authority to verify and approve all expenditures relating to the project and related exhibits.

Approved May 9, 2011

Filed May 9, 2011

## CHAPTER 45

### SENATE BILL NO. 2019

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

AN ACT to provide an appropriation for defraying the expenses of the parks and recreation department and the International Peace Garden; 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 parks and recreation department for the purpose of defraying the expenses of the parks and recreation department and the International Peace Garden, for the biennium beginning July 1, 2011, and ending June 30, 2013, as follows:

##### Subdivision 1.

#### PARKS AND RECREATION DEPARTMENT

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Administration	\$2,182,685	\$302,200	\$2,484,885
Natural resources	12,130,307	6,108,106	18,238,413
Recreation	<u>7,660,799</u>	<u>(131,708)</u>	<u>7,529,091</u>
Total all funds	\$21,973,791	\$6,278,598	\$28,252,389
Less estimated income	<u>12,148,054</u>	521,478	<u>12,669,532</u>
Total general fund	\$9,825,737	\$5,757,120	\$15,582,857
Full-time equivalent positions	53.00	1.00	54.00

##### Subdivision 2.

#### INTERNATIONAL PEACE GARDEN

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
International Peace Garden	<u>\$736,854</u>	<u>\$303,845</u>	<u>\$1,040,699</u>
Total general fund	\$736,854	\$303,845	\$1,040,699

##### Subdivision 3.

#### BILL TOTAL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$10,562,591	\$6,060,965	\$16,623,556
Grand total special funds	<u>12,148,054</u>	521,478	<u>12,669,532</u>
Grand total all funds	\$22,710,645	\$6,582,443	\$29,293,088

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-THIRD LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-first legislative assembly for the 2009-11 biennium and the 2011-13 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2009-11</u>	<u>2011-13</u>
Parks capital projects and deferred maintenance	\$2,359,768	\$4,299,210
Parks signage and maps	20,000	0
Parks equipment	0	58,000
Little Missouri state park trail leases	0	85,000
Parks SCORP plan	0	40,000
Parks community grant program	400,000	0
Federal fiscal stimulus - 2009	800,000	0
International Peace Garden capital projects and deferred maintenance	86,600	267,000
International Peace Garden loan repayment	1,850,000	0
International Peace Garden equipment	<u>55,000</u>	<u>0</u>
Total all funds	\$5,571,368	\$4,749,210
Less estimated income	<u>800,000</u>	<u>0</u>
Total general fund	\$4,771,368	\$4,749,210

The 2011-13 one-time funding amounts are not a part of the entity's base budget for the 2013-15 biennium. The parks and recreation department shall report to the appropriations committees of the sixty-third legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2011, and ending June 30, 2013.

**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 estimated income line item in subdivision 1 of section 1 of this Act, is from the game and fish operating fund or federal or other funds available to the game and fish department, and must be transferred to the parks and recreation department for maintenance, operating, and extraordinary repairs expenses relating to boat ramps at state parks for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 4. GAME AND FISH OPERATING FUND - TRANSFER - GRAHAMS ISLAND ACCESS ROAD.** The sum of \$400,000, or so much of the sum as may be necessary, included in the estimated income line item in subdivision 1 of section 1 of this Act, is from the game and fish operating fund and must be transferred to the parks and recreation department to pay a portion of the nonfederal costs to raise the elevation of the Grahams Island state park access road beginning with the effective date of this Act and ending June 30, 2013.

**SECTION 5. INTERNATIONAL PEACE GARDEN CONSERVATORY ADDITION.** The International Peace Garden line item in subdivision 2 of section 1 of this Act includes \$242,000 from the general fund for the state's share of the cost to build an expansion onto the conservatory for a cactus collection. The International Peace Garden must obtain the remaining funding of \$242,000 needed for the project from nonstate sources prior to beginning the project.

**SECTION 6. EMERGENCY.** Section 4 of this Act and \$575,000 included in the natural resources line item in section 1 of this Act, \$400,000 relating to the Grahams Island access road project and \$175,000 relating to the Fort Stevenson state park marina electric and water service project, are declared to be an emergency measure.

Approved May 9, 2011  
Filed May 9, 2011

## CHAPTER 46

### SENATE BILL NO. 2020

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

AN ACT to provide an appropriation for defraying the expenses of the state water commission; to create and enact a new subsection to section 11-37-02 and a new section to chapter 61-04 of the North Dakota Century Code, relating to joint powers entities and commerce authorities and metering certain water sources; to amend and reenact subsection 2 of section 11-37-03, section 11-37-04, subsection 8 of section 11-37-06, and subsection 1 of section 11-37-08 of the North Dakota Century Code and section 7 of chapter 20 of the 2009 Session Laws, relating to conversion of joint powers entities to commerce authorities and additional powers of commerce authorities and Fargo flood control project funding; to provide exemptions; to provide a transfer; to repeal section 5 of chapter 535 of the 1999 Session Laws, relating to pledge of revenues from the Grand Forks corporate center; to provide legislative intent; to provide for retroactive application; 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. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state water commission for the purpose of defraying the expenses of that agency, for the biennium beginning with the effective date of this Act, and ending June 30, 2013, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grants local cost-share	\$0	\$500,000	\$500,000
Beaver bay feasibility study	342,000	(342,000)	0
Administrative and support services	2,977,674	252,199	3,229,873
Water and atmospheric resources	307,768,034	140,645,740	448,413,774
Federal stimulus funds	0	7,271,773	7,271,773
Total all funds	\$311,087,708	\$148,327,712	\$459,415,420
Less estimated income	297,263,809	147,156,412	444,420,221
Total general fund	\$13,823,899	\$1,171,300	\$14,995,199
Full-time equivalent positions	86.00	1.00	87.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-THIRD LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-first legislative assembly for the 2009-11 biennium and the 2011-13 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2009-11</u>	<u>2011-13</u>
Federal stimulus funds	\$12,000,000	\$7,271,773
Ray/Tioga, Burke/Divide/Williams, Wildrose and Stanley water projects	2,792,000	500,000
Total special funds	\$14,792,000	\$7,771,773

The 2011-13 one-time funding amounts are not part of the entity's base budget for the 2013-15 biennium. The state water commission shall report to the appropriations committees of the sixty-third legislative assembly on the use of the one-time funding for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 3. SOVEREIGN LANDS ENFORCEMENT GRANT.** The administrative and support services line item in section 1 of this Act includes \$200,000 from the general fund that the state water commission shall provide as a grant to the game and fish department for law enforcement activities on sovereign lands in the state, for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 4. ADDITIONAL INCOME - APPROPRIATION - BUDGET SECTION APPROVAL.** In addition to the amounts included in the estimated income line item in section 1 of this Act, any additional amounts in the resources trust fund and water development trust fund that become available are appropriated to the state water commission for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2011, and ending June 30, 2013. The state water commission shall request and receive budget section approval prior to the expenditure of any funds in excess of the \$448,413,774 of funding appropriated in the water and atmospheric resources line item in section 1 of this Act.

**SECTION 5. GRANTS - WATER-RELATED PROJECTS - CARRYOVER AUTHORITY.** Section 54-44.1-11 does not apply to funding for grants or water-related projects included in the water and atmospheric resources line item in section 1 of this Act. However, this exclusion is only in effect for two years after June 30, 2013. 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 6. AMENDMENT.** Section 7 of chapter 20 of the 2009 Session Laws is amended and reenacted as follows:

**SECTION 7. FARGO FLOOD CONTROL PROJECT FUNDING - EXEMPTION.** Of the funds appropriated in the water and atmospheric resources line item in section 1 of this Act, \$45,000,000 is for Fargo flood control projects, for the biennium beginning July 1, 2009, and ending June 30, 2011. Any funds not spent by June 30, 2011, are not subject to section 54-44.1-11 and must be continued into the next or subsequent bienniums and may be expended only for Fargo flood control projects. These Except as otherwise provided, these funds may be used only for land purchases and construction; including right-of-way acquisition costs and may not be used for the purchase of dwellings. No more than ten percent of these funds may not be used for administration, engineering, legal, planning, or other similar purposes; and are not subject to the sixty five percent funding requirement contained in Senate Bill No. 2316 (2009). The city of Fargo, Cass County, and the Cass County joint water resource district must approve any expenditures made under this section. Costs incurred by nonstate entities for dwellings or other real property that are not paid by state funds are eligible for application by the nonstate entity for cost-sharing with the state.

**SECTION 7. FARGO FLOOD CONTROL PROJECT FUNDING - EXEMPTION.** Of the funds appropriated in the water and atmospheric resources line item in section 1 of this Act, \$30,000,000 is for Fargo flood control projects, for the biennium beginning July 1, 2011, and ending June 30, 2013. Any funds not spent by June 30, 2013, are not subject to section 54-44.1-11 and must be continued into the next or

subsequent bienniums and may be expended only for Fargo flood control projects. Except as otherwise provided, these funds may be used only for land purchases and construction, including right-of-way acquisition costs and may not be used for the purchase of dwellings. No more than ten percent of these funds may be used for engineering, legal, planning, or other similar purposes. The city of Fargo, Cass County, and the Cass County joint water resource district must approve any expenditures made under this section. Costs incurred by nonstate entities for dwellings or other real property that are not paid by state funds are eligible for application by the nonstate entity for cost-sharing with the state.

**SECTION 8. LEGISLATIVE INTENT - STATE WATER COMMISSION PROJECTS AND GRANTS.** It is the intent of the sixty-second legislative assembly that of the funds appropriated in the water and atmospheric resources line item in section 1 of this Act, the state water commission provide funding for the following grants and projects, for the biennium beginning with the effective date of this Act, and ending June 30, 2013:

Grant to wildlife services for animal control	\$250,000
Flood-related water projects in the Nelson County water resource district	\$250,000

**\*SECTION 9. LEGISLATIVE INTENT - REMOTE METERING OF WATER PERMITS - FUNDING.** It is the intent of the sixty-second legislative assembly that of the funds appropriated from the resources trust fund in the water and atmospheric resources line item in section 1 of this Act, the state water commission provide up to \$500,000 for a reimbursement program for the purchase and installation of remote water metering devices, for the biennium beginning with the effective date of this Act and ending June 30, 2013.

**SECTION 10.** A new subsection to section 11-37-02 of the North Dakota Century Code is created and enacted as follows:

Provide a method to convert an existing joint powers entity to a commerce authority for the purpose of achieving status as a political subdivision.

**SECTION 11. AMENDMENT.** Subsection 2 of section 11-37-03 of the North Dakota Century Code is amended and reenacted as follows:

- Two or more political subdivisions, whether in this state or in an adjoining state provided that at least one political subdivision is in this state, may create by execution of a joint agreement authorized by resolution of the governing body of each participating subdivision, a commerce authority that may exercise its functions upon the issuance by the secretary of state of a certificate of incorporation. Two or more political subdivisions, which are parties to a joint powers agreement under chapter 54-40 or 54-40.3, may convert an existing joint powers entity to a commerce authority by execution of a joint agreement authorized by resolution of the governing body of each participating political subdivision. The governing bodies of the participating political subdivisions shall appoint, pursuant to the joint agreement, no fewer than five persons as commissioners of the commerce authority.

**SECTION 12. AMENDMENT.** Section 11-37-04 of the North Dakota Century Code is amended and reenacted as follows:

**11-37-04. Filing of agreement and resolutions - Certificate of incorporation - Beginning of corporate existence.**

The joint agreement, if applicable, and a certified copy of the resolution of each political subdivision creating or agreeing to participate in a commerce authority, or converting an existing joint powers entity to a commerce authority, must be filed with the secretary of state. If the agreement and resolutions conform to the requirements of section 11-37-03, the secretary of state shall issue a certificate of incorporation that states the name of the commerce authority and the date of incorporation. The existence of the commerce authority as a political subdivision of this state begins upon the issuance of the certificate of incorporation. The certificate of incorporation is conclusive evidence of the existence of the commerce authority.

**SECTION 13. AMENDMENT.** Subsection 8 of section 11-37-06 of the North Dakota Century Code is amended and reenacted as follows:

8. Establish the geographical boundaries of the commerce authority within or coextensive with the geographical boundaries of one or more of the participating political subdivisions, or coextensive with the geographical boundaries of the area to be served by the commerce authority.

**SECTION 14. AMENDMENT.** Subsection 1 of section 11-37-08 of the North Dakota Century Code is amended and reenacted as follows:

1. A commerce authority may borrow money and issue bonds, including refunding bonds, in the form and upon the terms as it may determine, payable out of any revenues of the commerce authority. If a commerce authority is formed by conversion of a joint powers entity to a commerce authority under subsection 2 of section 11-37-03, the commerce authority may borrow money and issue bonds to refinance existing obligations of the participating political subdivisions without the provisions of subsection 8 as long as the existing obligations were incurred by the participating political subdivision for the benefit of the converted joint powers entity.

**\*SECTION 15.** A new section to chapter 61-04 of the North Dakota Century Code is created and enacted as follows:

**Metering of certain water sources required - Rules.**

The state engineer shall require permitholders to purchase and maintain remote metering devices for the metering of water used pursuant to a temporary, conditional, or perfected water permit and sold for oil and gas purposes. The metering requirement must not apply to water permits used exclusively for irrigation purposes or to temporary permits that have been returned to irrigation use. Except for nonpotable ground water used for enhanced oil recovery purposes and water uses of less than fifteen acre-feet per year, all other permitted and temporarily permitted industrial water supplies sold for oil and gas purposes are subject to the metering requirements of this section. The state engineer shall develop rules to provide:

1. The specifications for remote terminal water metering devices;
2. That metering be operational by July 1, 2012;
3. That meters be available for inspection by state water commission staff on a daily basis;

4. That meters be sealed and tamperproof:
5. That meters may be replaced only under supervision of the state engineer:
6. That the penalty for circumventing the provisions of this section must be a thirty-day suspension of the noncompliant permit; and
7. That subsequent violations within a year result in a doubling of the penalty for the prior violation.

The state engineer shall establish a reimbursement policy for the purchase and installation of the remote terminal water metering devices. Permitholders may apply to the state engineer for reimbursement of one-half of the cost of a qualifying metering device, including installation, up to a total reimbursement of five thousand dollars per metering device installed.

**SECTION 16. TRANSFER - PERMANENT OIL TAX TRUST FUND - 2009-11 BIENNIUM.** The office of management and budget shall transfer any unexpended funds appropriated from the permanent oil tax trust fund in chapter 25 of the 2009 Session Laws to the water commission fund at the end of the biennium beginning July 1, 2009, and ending June 30, 2011. For the purposes of this section, "end of the biennium" means thirty days after the close of the biennial period but prior to the cancellation of unexpended appropriations under section 54-44.1-11.

**SECTION 17. APPLICATION.** A commerce authority formed by the conversion of a joint powers agreement under this Act remains a valid commerce authority after the expiration date of this Act. Sections 10 through 14 of this Act do not grant any additional authority to exercise the power of eminent domain or issue general obligation bonds to a commerce authority formed by a conversion of a joint powers agreement under this Act.

**SECTION 18. EXPIRATION DATE.** Sections 10 through 14 of this Act are effective through July 31, 2013, and after that date are ineffective.

**SECTION 19. REPEAL.** Section 5 of chapter 535 of the 1999 Session Laws is repealed.

**SECTION 20. RETROACTIVE APPLICATION.** Section 6 of this Act applies retroactively to January 1, 2011.

**SECTION 21. EMERGENCY.** This Act is declared to be an emergency measure.

Approved May 18, 2011  
Filed May 18, 2011

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\* Sections 9 and 15 of Senate Bill No. 2020 were vetoed, see chapter 516.



**CHAPTER 47**

**SENATE BILL NO. 2021**

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

AN ACT to provide an appropriation for defraying the expenses of workforce safety and insurance.

**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, 2011, and ending June 30, 2013, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Total special funds	\$56,877,605	\$1,535,688	\$58,413,293
Full-time equivalent positions	247.14	0.00	247.14

Approved May 5, 2011  
 Filed May 5, 2011

## CHAPTER 48

### SENATE BILL NO. 2022

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

AN ACT to provide an appropriation for defraying the expenses of various state retirement and investment agencies; to provide an exemption; to provide various transfers; to amend and reenact sections 15-39.1-08, 21-10-01, and 54-52-03 of the North Dakota Century Code, relating to the per day compensation rates for the board of trustees of the teachers' fund for retirement, state investment board, and retirement board; 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 from special funds derived from income, to the retirement and investment agencies listed in this section for the purpose of defraying their expenses, for the biennium beginning July 1, 2011, and ending June 30, 2013, as follows:

Subdivision 1.

#### RETIREMENT AND INVESTMENT OFFICE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$2,674,080	\$529,034	\$3,203,114
Operating expenses	949,570	(1,730)	947,840
Contingencies	<u>82,000</u>	<u>0</u>	<u>82,000</u>
Total special funds	\$3,705,650	\$527,304	\$4,232,954
Full-time equivalent positions	17.00	1.00	18.00

Subdivision 2.

#### PUBLIC EMPLOYEES RETIREMENT SYSTEM

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$4,236,489	\$327,018	\$4,563,507
Operating expenses	1,659,999	303,384	1,963,383
Contingencies	<u>250,000</u>	<u>0</u>	<u>250,000</u>
Total all funds	\$6,146,488	\$630,402	\$6,776,890
Less estimated income	<u>6,133,488</u>	<u>643,402</u>	<u>6,776,890</u>
Total general fund	\$13,000	(\$13,000)	\$0
Full-time equivalent positions	33.00	0.00	33.00

Subdivision 3.

BILL TOTAL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$13,000	(\$13,000)	\$0
Grand total special funds	<u>9,839,138</u>	<u>1,170,706</u>	<u>11,009,844</u>
Grand total all funds	\$9,852,138	\$1,157,706	\$11,009,844
Full-time equivalent positions	50.00	1.00	51.00

**SECTION 2. EXEMPTION.** The amount appropriated for the PERSLINK system, and approved for carryover to the 2009-11 biennium is not subject to the provisions of section 54-44.1-11. Any unexpended funds carried over pursuant to this section are available for the completion of the PERSLINK system during the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 3. APPROPRIATION LINE ITEM TRANSFERS.** Upon approval of the respective boards, the retirement and investment office and the public employees retirement system may transfer from their respective contingencies line items in subdivisions 1 and 2 of section 1 of this Act to all other line items. The agencies shall notify the office of management and budget of each transfer made pursuant to this section.

**SECTION 4. AMENDMENT.** Section 15-39.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-08. Compensation of members.**

Members of the board, excluding ex officio members, are entitled to receive ~~sixty-two one hundred forty-eight dollars and fifty cents~~ as compensation per day and necessary mileage and travel expenses as provided in sections 44-08-04 and 54-06-09 for attending meetings of the board. No member of the board may lose regular salary, vacation pay, vacation or any personal leave, or be denied right of attendance by the state or political subdivision thereof while serving on official business of the fund.

**SECTION 5. 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 governor, the state treasurer, the commissioner of university and school lands, the director of workforce safety and insurance, the insurance commissioner, 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 of the elected members of the public employees retirement system board as selected by that board, and one member of the public employees retirement system board as selected by that board. 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. 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 ~~sixty-two one hundred forty-eight~~ sixty-two one hundred forty-eight dollars and ~~fifty cents~~ fifty cents 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. 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.

<sup>12</sup> **SECTION 6. AMENDMENT.** Section 54-52-03 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-03. Governing authority.**

A state agency is hereby created to constitute the governing authority of the system to consist of a board of seven persons known as the retirement board. No more than one elected member of the board may be in the employ of a single department, institution, or agency of the state or in the employ of a political subdivision. No employee of the public employees retirement system or the state retirement and investment office may serve on the board.

1. One member of the board must be appointed by the governor to serve a term of five years. The appointee must be a North Dakota citizen who is not a state or political subdivision employee and who by experience is familiar with money management. The citizen member is chairman of the board.
2. One member of the board must be appointed by the attorney general from the attorney general's legal staff and shall serve a term of five years.
3. The state health officer appointed under section 23-01-05 is a member of the board.
4. Three board members must be elected by and from among the active participating members, members of the retirement plan established under chapter 54-52.6, members of the retirement plan established under chapter 39-03.1, and members of the job service North Dakota retirement plan. Employees who have terminated their employment for whatever reason are not eligible to serve as elected members of the board under this subsection. Board members must be elected to a five-year term pursuant to an election called by the board. Notice of board elections must be given to all active participating members. The time spent in performing duties as a board member may not be charged against any employee's accumulated annual or any other type of leave.

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<sup>12</sup> Section 54-52-03 was also amended by section 6 of Senate Bill No. 2109, chapter 431.

5. One board member must be elected by and from among those persons who are receiving retirement benefits or who are eligible to receive deferred vested retirement benefits under this chapter. The board shall call the election and must give prior notice of the election to the persons eligible to participate in the election pursuant to this subsection. The board member shall serve a term of five years.
6. The members of the board are entitled to receive ~~sixty-two one hundred forty-eight~~ forty-eight dollars ~~and fifty cents~~ per day compensation and necessary mileage and travel expenses as provided in sections 44-08-04 and 54-06-09. This is in addition to any other pay or allowance due the chairman or a member, plus an allowance for expenses they may incur through service on the board.
7. A board member shall serve a five-year term and until the board member's successor qualifies. Each board member is entitled to one vote, and four of the seven board members constitute a quorum. Four votes are necessary for resolution or action by the board at any meeting.

**SECTION 7. OASIS FUND TRANSFER.** The office of management and budget shall transfer any balance remaining in the oasis retirement fund to the general fund on or before June 30, 2011.

**SECTION 8. EMERGENCY.** Section 7 of this Act is declared to be an emergency measure.

Approved May 9, 2011

Filed May 9, 2011

## CHAPTER 49

### SENATE BILL NO. 2023

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

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

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

**SECTION 1. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sums as hereinafter provided or so much of the sums as may be necessary, and from special funds derived from the property tax relief sustainability fund in the state treasury. These sums increase the general fund and special fund authority enacted by the sixty-first legislative assembly to the stated departments and institutions of the state of North Dakota for the purpose of defraying their expenses, for the period beginning January 1, 2011, and ending June 30, 2011, as follows:

Subdivision 1.

OFFICE OF THE TAX COMMISSIONER

Homestead tax credit	\$1,349,000
Disabled veteran credit	<u>461,000</u>
Total general fund appropriation	\$1,810,000

Subdivision 2.

VALLEY CITY STATE UNIVERSITY

2009 flood expenditures	<u>\$58,904</u>
Total general fund appropriation	58,904

Subdivision 3.

DEPARTMENT OF PUBLIC INSTRUCTION

Grants - Mill levy reductions	<u>\$4,233,000</u>
Total special funds	\$4,233,000
Grand total general fund appropriation	\$1,868,904
Grand total special funds	\$4,233,000
Grand total all funds	\$6,101,904

**SECTION 2. TRANSFER TO PROPERTY TAX RELIEF SUSTAINABILITY FUND FROM PERMANENT OIL TAX TRUST FUND.** Before June 30, 2011, the director of the office of management and budget shall transfer \$4,233,000 from the permanent oil tax trust fund to the property tax relief sustainability fund.

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

Approved May 5, 2011  
Filed May 5, 2011

## CHAPTER 50

### SENATE BILL NO. 2057

(Legislative Management)  
(Workforce Committee)

AN ACT to provide an appropriation for defraying the expenses of the department of commerce; to create and enact section 10-30.5-13, a new chapter to title 17, two new sections to chapter 54-60, a new chapter to title 54, a new subdivision to subsection 7 of section 57-38-30.3, and a new section to chapter 57-38 of the North Dakota Century Code, relating to a small business technology investment program, a biofuel blender pump incentive program, the internship fund, an electronic portfolio program, centers of research excellence, and income tax credits for purchases of manufacturing machinery and equipment for the purpose of automating manufacturing processes; to amend and reenact sections 10-30.5-02, 15-69-01, 15-69-03, 15-69-04, and 15-69-05 of the North Dakota Century Code, relating to the North Dakota development fund, incorporated, and centers of excellence program; to repeal chapter 15-69 of the North Dakota Century Code, relating to the centers of excellence program; to provide for a legislative management study; to provide a vaccinology initiative grant; to provide a continuing appropriation; to provide exemptions; to provide for transfers; to provide legislative intent; 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 commerce for the purpose of defraying the expenses of the department of commerce, for the biennium beginning July 1, 2011, and ending June 30, 2013 as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$10,020,840	\$837,411	\$10,858,251
Operating expenses	14,478,272	(451,622)	14,026,650
Capital assets	25,000	45,018	70,018
Grants	65,411,058	(5,383,064)	60,027,994
Discretionary funds	928,083	(1)	928,082
Workforce enhancement	0	375,000	375,000
Economic development initiatives	186,846	0	186,846
Agricultural products utilization	2,536,630	203,137	2,739,767
Centers of excellence	0	12,000,000	12,000,000
North Dakota trade office	2,064,000	549,400	2,613,400
Partner programs	2,022,044	50,000	2,072,044
Federal fiscal stimulus funds	0	<u>24,496,750</u>	<u>24,496,750</u>
Total all funds	\$97,672,773	\$32,722,029	\$130,394,802
Less estimated income	<u>69,666,470</u>	<u>18,968,467</u>	<u>88,634,937</u>
Total general fund	\$28,006,303	\$13,753,562	\$41,759,865
Full-time equivalent positions	68.00	0.25	68.25

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-THIRD LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-first legislative assembly for the 2009-11 biennium and the 2011-13 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2009-11</u>	<u>2011-13</u>
Workforce enhancement fund	\$1,000,000	\$375,000
American Indian business office	0	50,000
Biofuel blender pumps	1,000,000	0
Promotion and marketing of USS North Dakota	100,000	0
Lewis and Clark foundation grants	1,500,000	0
Theodore Roosevelt Medora foundation grant	500,000	0
Child care grants and loans	1,820,000	0
Centers of research excellence	19,500,000	12,000,000
Electronic portfolio pilot project	0	150,000
2020 and beyond	0	50,000
Great plains applied energy research center	5,000,000	0
Equine processing study	50,000	0
Federal fiscal stimulus	<u>68,594,635</u>	<u>24,496,750</u>
Total all funds	\$99,064,635	\$37,121,750
Less estimated income	<u>68,594,635</u>	<u>24,496,750</u>
Total general fund	\$30,470,000	\$12,625,000

The 2011-13 one-time funding amounts are not a part of the entity's base budget for the 2013-15 biennium. The department of commerce shall report to the appropriations committees of the sixty-third legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 3. AMENDMENT.** Section 10-30.5-02 of the North Dakota Century Code is amended and reenacted as follows:

**10-30.5-02. (Effective through July 31, ~~2011~~2013) Purpose and fund uses.**

1. It is the purpose of this chapter to create a statewide nonprofit development corporation that will have the authority to take equity positions in, to provide loans to, or to use other innovative financing mechanisms to provide capital for new or expanding businesses in this state, or relocating businesses to this state. The corporation's principal mission is the development and expansion of primary sector business in this state. The corporation may form additional corporations, limited liability companies, partnerships, or other forms of business associations in order to further its mission of primary sector economic development.
2. The exclusive focus of this corporation is business development in this state; however, it is not excluded from participation with other states or organizations in projects that have a clear economic benefit to state residents in the creation of jobs or secondary business. Emphasis should be to develop jobs that provide an income adequate to support a family above the poverty level.
3. Moneys in the development fund may be used to provide working capital or for financing the purchase of fixed assets but not to refinance existing debt. Moneys may also be used to make matching grants to county-authorized or city-authorized development corporations for the acquisition, leasing, or remodeling of real estate facilities for locating a prospective new primary



sector business. A grant must be made as part of a package of financing in which the state is a participant.

4. The commissioner of commerce shall adopt rules, subject to the approval of the board of directors, necessary to implement the administration of the fund. The rules to implement the grant program must be developed to encourage local fundraising initiatives for developing locations for businesses financed by the corporation.
5. Moneys in the development fund may be used to provide financing to early childhood facilities licensed under chapter 50-11.1. Moneys also may be used to make grants or loans to match grants or loans made by county-authorized or city-authorized development corporations, job development authorities created under chapter 11-11.1 or 40-57.4, and regional planning councils for acquiring, leasing, or remodeling of real estate facilities or for acquiring equipment for establishing or expanding a licensed early childhood facility. In providing financing under this subsection, the corporation shall ensure funds are distributed fairly among for-profit early childhood facilities, nonprofit early childhood facilities, and public early childhood facilities. An award under this subsection may not exceed one hundred thousand dollars per award.

**(Effective after July 31, 2014)** Purpose and fund uses.

1. It is the purpose of this chapter to create a statewide nonprofit development corporation that will have the authority to take equity positions in, to provide loans to, or to use other innovative financing mechanisms to provide capital for new or expanding businesses in this state, or relocating businesses to this state. The corporation's principal mission is the development and expansion of primary sector business in this state. The corporation may form additional corporations, limited liability companies, partnerships, or other forms of business associations in order to further its mission of primary sector economic development.
2. The exclusive focus of this corporation is business development in this state; however, it is not excluded from participation with other states or organizations in projects that have a clear economic benefit to state residents in the creation of jobs or secondary business. Emphasis should be to develop jobs that provide an income adequate to support a family above the poverty level.
3. Moneys in the development fund may be used to provide working capital or for financing the purchase of fixed assets but not to refinance existing debt. Moneys may also be used to make matching grants to county-authorized or city-authorized development corporations for the acquisition, leasing, or remodeling of real estate facilities for locating a prospective new primary sector business. A grant must be made as part of a package of financing in which the state is a participant.
4. The commissioner of commerce shall adopt rules, subject to the approval of the board of directors, necessary to implement the administration of the fund. The rules to implement the grant program must be developed to encourage local fundraising initiatives for developing locations for businesses financed by the corporation.

**SECTION 4.** Section 10-30.5-13 of the North Dakota Century Code is created and enacted as follows:

**10-30.5-13. Small business technology investment program.**

1. The corporation shall administer a small business technology investment program that provides matching investments to startup technology-based businesses.
2. The following provisions apply to small business technology investments:
  - a. A qualified applicant:
    - (1) Must be a North Dakota business that is at the startup stage;
    - (2) Must be a primary sector business in the technology field; and
    - (3) Shall meet underwriting guidelines established by the corporation.
  - b. Before the corporation distributes funds under this section, the recipient shall provide the corporation with detailed documentation of the availability of two dollars of angel fund investment matching funds for each dollar of state funds distributed under this section. The matching funds must be cash, must come from a North Dakota angel fund certified under section 57-38-01.26, and may not be an in-kind asset.
3. An investment under this section may not exceed fifty thousand dollars. Eligible use of the investment funds include developing a proof of concept. A recipient may not receive more than one award under this section.
4. An investment under this section is not a business incentive under chapter 54-60.1.

**SECTION 5. AMENDMENT.** Section 15-69-01 of the North Dakota Century Code is amended and reenacted as follows:

**15-69-01. (Effective through July 31, 2011) Definitions.**

In this chapter, unless the context otherwise requires:

1. "Board" means the state board of higher education.
2. "Center" means a center of excellence relating to economic development which has been designated or named under this chapter.
3. "Commission" means the centers of excellence commission.
4. "Department" means the department of commerce.
5. "Foundation" means the North Dakota economic development foundation.
5. "Industry cluster" means one of the following industries:
  - a. ~~Advanced manufacturing;~~
  - b. ~~Energy;~~
  - c. ~~Information and technology;~~

- d. ~~Tourism;~~
  - e. ~~Value-added agriculture; or~~
  - f. ~~An industry, including the aerospace industry, specifically identified by the department of commerce as an industry that will contribute to the gross state product.~~
6. "Infrastructure" means new building construction or major building renovation. The term does not include a purchase of equipment or remodel of an existing building.

**SECTION 6. AMENDMENT.** Section 15-69-03 of the North Dakota Century Code is amended and reenacted as follows:

**15-69-03. ~~(Effective through July 31, 2011)~~ Centers of excellence commission.**

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

**SECTION 7. AMENDMENT.** Section 15-69-04 of the North Dakota Century Code is amended and reenacted as follows:

**15-69-04. ~~(Effective through July 31, 2011)~~ Application — Eligibility requirementsCenters of excellence program.**

1. The department of commerce shall ~~provide center application forms, accept applications, review applications for completeness and compliance with board and commission policy, forward complete applications to the commission in accordance with guidelines established by the commission, and assist with preaward reviews and postaward monitoring as may be requested by the commission. No more than two applications per campus of an institution of higher education under the control of the board may be submitted to the department of commerce for each round of center funding.~~
2. The commission shall meet as necessary to ~~review all complete applications; consider the potential need for independent, expert review of complete applications; approve or disapprove complete applications; make funding award recommendations for commission approved proposed centers; direct~~

the department of commerce to distribute funds to the centers; monitor centers for compliance with award requirements; review changes in assertions made in center applications; and conduct postaward monitoring of centers.

3. ~~In considering whether to approve or disapprove an application, the commission shall determine whether the applicant has conducted the due diligence necessary to put together a viable proposal, the commission shall determine whether the applicant has provided information in the application which clearly outlines how the matching fund requirement will be met, and the commission shall consider whether the center will:~~
  - a. ~~Use university or college research to promote private sector job growth and expansion of knowledge based industries or use university or college research to promote the development of new products, high tech companies, or skilled jobs in this state;~~
  - b. ~~Create high value private sector employment opportunities in this state;~~
  - c. ~~Provide for public private sector involvement and partnerships;~~
  - d. ~~Leverage other funding, including cash from the private sector;~~
  - e. ~~Increase research and development activities that may involve federal funding from the national science foundation experimental program to stimulate competitive research;~~
  - f. ~~Foster and practice entrepreneurship;~~
  - g. ~~Promote the commercialization of new products and services in industry clusters;~~
  - h. ~~Become financially self sustaining; and~~
  - i. ~~Establish and meet a deadline for acquiring and expending all public and private funds specified in the application.~~
4. ~~In considering whether to approve an application, the commission may provide for an independent, expert review of the application to determine whether the proposed center is viable and whether the proposed center is likely to have the desired economic impact. As necessary, the commission may contract for additional technical review of applications. The commission may not approve an application unless the commission determines the proposed center has a high likelihood of viability and success in positively impacting economic development in the state.~~
5. For no fewer than six years and no more than ten years following center designation, the commission shall monitor the center's activities in order to determine whether the center is having the desired economic impact.

**SECTION 8. AMENDMENT.** Section 15-69-05 of the North Dakota Century Code is amended and reenacted as follows:

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

1. A center shall use funds awarded under this chapter to enhance capacity and leverage state, federal, and private sources of funding. A center awarded funds under this chapter may not use the funds for infrastructure, to supplant funding for current operations or academic instructions, or to pay indirect costs.
2. As a condition for receipt of funds under this chapter, a center shall agree to provide the ~~board~~ department, foundation, and budget section of the legislative management with annual audits on all funds distributed to the center under this chapter. The annual audits must be provided until the completion of the commission's postaward monitoring of the center. As a condition for receipt of funds under this chapter, a center shall agree to provide the commission with the information necessary to monitor the postaward activities of the center. Instead of requiring annual audits under this subsection, the commission may require that the center be audited on all funds distributed to the center under this chapter after the second full fiscal year of the postaward monitoring and after all funds distributed to the center under this chapter have been expended and that for all other years during the postaward monitoring the center contract with an independent accountant for an agreed-upon procedures engagement. A center may use funds distributed to the center under this chapter to pay for audits required under this subsection or for an agreed-upon procedures engagement. At a minimum, an agreed-upon procedures engagement under this subsection must include:
  - a. Verification of the accuracy of jobs data regarding jobs claimed created by the center, distinguishing between the creation of private sector jobs and jobs within the institution of higher education;
  - b. Verification of compliance with the centers of excellence program matching fund requirements;
  - c. Verification awarded center funds were used for authorized uses;
  - d. Verification the center complied with the center's application timeline and any authorized revisions;
  - e. Verification the center complied with the center's scope of activities as provided under the center's application and any authorized revisions;
  - f. Review of a sample of center expenditures to verify the expenses were approved, supported with documentation, and made in accordance with the scope identified in the center's application;
  - g. Verification of a sample of labor charged to the center; and
  - h. Comparison of the center's application budget to the center's actual expenditures, including documentation explaining any material differences.
3. Before the commission directs the department of commerce to distribute funds awarded under this chapter, the center shall provide the commission with detailed documentation of private sector participation and the availability of two dollars of matching funds for each dollar of state funds to be distributed

under this chapter. Of the two dollars of matching funds, at least one dollar must be cash, of which at least fifty cents must be from the private sector. The matching funds may include funds facilitated through the collaboration of the private sector participants with other funding entities. The noncash matching funds may include in-kind assets with itemized value. Private sector participation may be established through equity investments or through contracts for services with private sector entities. ~~In making funding recommendations and designation determinations, the commission, board, foundation, and budget section shall give major consideration to the portion of the matching funds provided in cash by the private sector.~~

4. The commission shall direct the department of commerce to distribute the funds awarded under this chapter in disbursements consistent with the center's budget and timeframe outlined in the approved award. The commission may not direct distribution of funds under this chapter if there are no private sector partners participating or if the statutorily required matching funds are not available.
5. If, before funds are distributed by the department of commerce, a center undergoes a change in the terms of or assertions made in its application, the commission may direct that the department of commerce withhold all or a portion of any undistributed funds pending commission review of the changes.
6. ~~The commission~~department may use funds ~~appropriated for available within the centers of excellence program fund~~ to pay for the ~~commission's department's~~ administrative expenses, ~~which may include contracting for independent, expert reviews of complete applications and centers of excellence forums related to this program.~~ The amount of funds the commission uses each biennium for administrative expenses may not exceed ~~two and one half percent of the funds appropriated for the program that biennium.~~

**SECTION 9.** A new chapter to title 17 of the North Dakota Century Code is created and enacted as follows:

**Definitions.**

For purposes of this chapter, unless the context otherwise requires:

1. "Biodiesel" means any non-petroleum-based diesel fuel made from a renewable resource such as vegetable oil or animal fat.
2. "E85 fuel" means a petroleum product that:
  - a. Is a blend of agriculturally derived denatured ethanol and gasoline or natural gasoline;
  - b. Typically contains eighty-five percent ethanol by volume but must at a minimum contain sixty percent ethanol by volume; and
  - c. Complies with the American society for testing materials specification D 5798-96.
3. "Motor fuel retailer" means a person that acquires motor vehicle fuel from a supplier or distributor for resale to a consumer at a retail location.

4. "Retail location" means a site at which motor vehicle fuel is dispensed through a pump from an underground or aboveground storage tank into the supply tank of a motor vehicle.

### **Biofuel blender pump incentive program - Administration.**

1. The department of commerce shall administer the biofuel blender pump incentive program to provide cost-share grants of up to a maximum of twenty thousand dollars per retail location to motor fuel retailers for the installation of biofuel blender pumps and up to fourteen thousand dollars per retail location for the installation of associated equipment, including the piping systems and storage components, when blender pumps are installed for a maximum grant of thirty-four thousand dollars per location.
2. In determining eligibility for grant funds, the department shall establish by rule criteria governing:
  - a. The verification of costs for biofuel blender pumps and associated equipment, including the piping system and storage components;
  - b. The eligibility of grant recipients;
  - c. The application and grant award procedure; and
  - d. Reporting and accountability procedures for grant recipients.

### **Blender pumps - Requirements.**

1. To qualify for a grant under this chapter, a retailer must install an ethanol blender pump and an associated storage and piping system. The pump must be the type that:
  - a. Dispenses at retail a blend of gasoline and ethanol in the ratio selected by the purchaser;
  - b. Is manufactured to an industry standard and carries a warranty for compatibility with dispenser components and storage and piping systems;
  - c. Has at least four hoses and dispenses the following:
    - (1) Either a blend of ten percent ethanol or the minimum blend percentage approved for all vehicles by the United States environmental protection agency;
    - (2) A blend of at least twenty percent ethanol; and
    - (3) E85 fuel; and
  - d. Complies with all alternative fuel, biofuel, and flexible fuel requirements established by law.
2. In order to qualify for a grant under this chapter, a retailer must install a biodiesel blender pump that:
  - a. Dispenses at retail varying blends of biodiesel and mineral diesel in the ratio selected by the purchaser; and

- b. Complies with all alternative fuel, biofuel, and flexible fuel requirements established by law.

**Biofuel blender pump incentive program - Administrative costs.**

The department may use up to five percent of any amount appropriated to the biofuel blender pump incentive program for administration, the dissemination of information regarding the biofuel blender pump incentive program, and the dissemination of information regarding the benefits of biofuels.

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

**Internship fund - Continuing appropriation.**

The internship fund is a special fund in the state treasury. All funds in the internship fund are appropriated to the department of commerce on a continuing basis for the purpose of implementing and administering section 54-60-17. Interest earned by the fund must be credited to the fund.

**SECTION 11.** A new section to chapter 54-60 of the North Dakota Century Code is created and enacted as follows:

**Division of workforce development - Pilot program - Higher education electronic portfolio system.**

1. The division of workforce development, the North Dakota university system, job service North Dakota, and representatives of the institutions of higher education under the control of the state board of higher education shall work together to establish a pilot program through which an electronic portfolio system will be implemented by selected institutions of higher education under the control of the state board of higher education in order to address the needs of students, faculty, and employers. The pilot program may include Valley City state university and the North Dakota state college of science. If Valley City state university or the North Dakota state college of science chooses not to participate, any other institution of higher education under the control of the state board of higher education may participate in this pilot program.
2. The pilot program must provide for an electronic portfolio system that:
  - a. Is online;
  - b. Is a multimedia system that enables the user to create and manage the user's education and career information;
  - c. Enables students, job seekers, and professionals to showcase education and skills to potential employers;
  - d. Provides for creation of and access to lifelong personal electronic portfolio accounts and services to students, job seekers, and professionals seeking to advance their careers in the state;
  - e. Provides access to job seekers residing outside the state who may be interested in relocating or returning to the state; and



- f. Allows employers and economic developers to conduct online searches to determine workforce potential by geographic region, skill, education, experience, and other factors.
3. Under this pilot program, the North Dakota university system, job service North Dakota, and the division of workforce development shall work together to:
    - a. Facilitate the effective integration of future workers into the workforce system and to enhance the ability of state and local economic development officials to effectively access North Dakota's skilled workforce through the system; and
    - b. Ensure the system is complementary to the state's workforce system and higher education system.
  4. The division of workforce development shall administer the pilot program.
  5. The division of workforce development shall report to the budget section on the use of the funding provided for this program, including an overview of the program, program expenditures, and statistics on the effectiveness of the program.

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

**Definitions.**

In this chapter, unless the context 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. "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.

### **Centers of research excellence - Application - Eligibility.**

1. The department shall establish a centers of research excellence program. The commission shall make funding award determinations under this program. A center must be a research university or a nonprofit university-related or college-related foundation of a research university which is working in partnership with the private sector.
2. The department shall provide center application forms, accept applications, review applications for completeness and compliance with commission policy, forward complete applications to the commission in accordance with guidelines established by the commission, and assist with preaward reviews and postaward monitoring as may be requested by the commission.
3. The commission shall meet as necessary to review all complete applications; consider the potential need for independent, expert review of complete applications; approve or disapprove complete applications; make funding award recommendations for commission-approved proposed centers; direct the department to distribute funds to the centers; monitor centers for compliance with award requirements; review changes in assertions made in center applications; and conduct postaward monitoring of centers.
4. In considering whether to approve or disapprove a center application, the commission shall determine whether the applicant has conducted the due diligence necessary to put together a viable proposal, the commission shall determine whether the applicant has provided information in the application which clearly outlines how the matching fund requirement will be met, and the commission shall consider whether the center will:
  - a. Use university research to promote private sector job growth and expansion of knowledge-based industries or use university research to promote the development of new products, high-tech companies, or skilled jobs in this state;
  - b. Create high-value private sector employment opportunities in this state;
  - c. Provide for public-private sector involvement and partnerships;
  - d. Leverage other funding, including cash from the private sector;
  - e. Promote the commercialization of new products and services in industry clusters; and
  - f. Establish and meet a deadline for acquiring and expending all public and private funds specified in the application.
5. In considering whether to approve an application, the commission may provide for an independent, expert review of the application to determine whether the proposed center is viable and whether the proposed center is likely to have the desired economic impact. As necessary, the commission may contract for additional technical review of applications. The commission

may not approve an application unless the commission determines the proposed center has a high likelihood of viability and success in positively impacting economic development in the state.

6. The board rules adopted under subsection 9 of section 15-10-17, relating to ownership of intellectual property, inventions, and discoveries, must address activities and issues unique to centers.

**Use of funds - Terms of funds - Distribution of funds - Postaward monitoring.**

1. A center shall use center grant funds to enhance capacity and leverage state, federal, and private sources of funding. A center awarded center funds under this chapter may not use the funds for infrastructure, to supplant funding for current operations or academic instructions, or to pay indirect costs.
2. For no fewer than six years and no more than ten years following center designation, the commission shall monitor the center's activities in order to determine whether the center is having the desired economic impact.
3. As a condition for receipt of funds under this chapter, a center shall agree to provide the board, foundation, and budget section of the legislative management with annual audits on all funds distributed to the center under this chapter. The annual audits must be provided until the completion of the commission's postaward monitoring of the center. As a condition for receipt of funds under this chapter, a center shall agree to provide the commission with the information necessary to monitor the postaward activities of the center. Instead of requiring annual audits under this subsection, the commission may require that the center be audited on all funds distributed to the center under this chapter after the second full fiscal year of the postaward monitoring and after all funds distributed to the center under this chapter have been expended and that for all other years during the postaward monitoring the center contract with an independent accountant for an agreed-upon procedures engagement. A center may use funds distributed to the center under this chapter to pay for audits required under this subsection or for an agreed-upon procedures engagement. At a minimum, an agreed-upon procedures engagement under this subsection must include:
  - a. Verification of the accuracy of jobs data regarding jobs claimed created by the center, distinguishing between the creation of private sector jobs and jobs within the institution of higher education;
  - b. Verification of compliance with the centers of excellence program matching fund requirements;
  - c. Verification awarded center funds were used for authorized uses;
  - d. Verification the center complied with the center's application timeline and any authorized revisions;
  - e. Verification the center complied with the center's scope of activities as provided under the center's application and any authorized revisions;

- f. Review of a sample of center expenditures to verify the expenses were approved, supported with documentation, and made in accordance with the scope identified in the center's application;
        - g. Verification of a sample of labor charged to the center; and
        - h. Comparison of the center's application budget to the center's actual expenditures, including documentation explaining any material differences.
4. Before the commission directs the department to distribute center funds awarded under this chapter, the center shall provide the commission with detailed documentation of private sector participation and the availability of two dollars of matching funds for each dollar of state funds to be distributed. Of the two dollars of matching funds, at least one dollar must be cash, of which at least fifty cents must be from the private sector. The matching funds may include funds facilitated through the collaboration of the private sector participants with other funding entities. The noncash matching funds may include in-kind assets with itemized value. Private sector participation may be established through equity investments or through contracts for services with private sector entities. In making funding recommendations and designation determinations, the commission shall give major consideration to the portion of the matching funds provided in cash by the private sector.
5. The commission shall direct the department to distribute the center funds awarded under this chapter in disbursements consistent with the center's budget and timeframe outlined in the approved award. The commission may not direct distribution of center funds under this chapter if there are no private sector partners participating or if the statutorily required matching funds are not available.
6. If, before center funds are distributed by the department, a center undergoes a change in the terms of or assertions made in its application, the commission may direct that the department withhold all or a portion of any undistributed funds pending commission review of the changes.
7. The commission may use funds appropriated for the centers of research excellence program to pay for the commission's administrative expenses.

#### **Base realignment grants.**

As part of the centers of research excellence program, the department of commerce shall establish and administer a base realignment grant program to provide grants to a research university or a nonprofit university-related foundation to enhance economic development and employment opportunities associated with the Grand Forks air force base resulting from action by the federal defense base closure and realignment commission and infrastructure and economic development projects or programs to accommodate growth in proximity to or at the Grand Forks air force base. Under this program, the commission shall make grant award determinations. The department shall work with the commission in establishing guidelines to qualify for a grant under this section.

#### **Centers of research excellence fund - Continuing appropriation.**

The centers of research excellence fund is a special fund in the state treasury. All moneys in the centers of research excellence fund are appropriated to the department of commerce on a continuing basis for the purpose of implementing and

administering this chapter. Interest earned on moneys in the fund must be credited to the fund.

<sup>13</sup> **SECTION 13.** A new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

Automating manufacturing processes tax credit under section 14 of this Act.

**SECTION 14.** A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

**Income tax credit for purchases of manufacturing machinery and equipment for the purpose of automating manufacturing processes.**

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. The amount of the credit under this section is twenty percent of the costs incurred in the taxable year to purchase manufacturing machinery and equipment for the purpose of automating manufacturing processes. Qualified expenditures under this section may not be used in the calculation of any other income tax deduction or credit allowed by law.
2. For purposes of this section:
  - a. "Manufacturing machinery and equipment for the purpose of automating manufacturing processes" means new or used automation and robotic equipment.
  - b. "Primary sector business" means a business certified by the department of commerce which, through the employment of knowledge or labor, adds value to a product, process, or service that results in the creation of new wealth.
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 under this section may not exceed two million dollars in any calendar year. Credits subject to this limitation must be determined based upon the date of the qualified purchase.

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<sup>13</sup> Section 57-38-30.3 was also amended by section 7 of Senate Bill No. 2210, chapter 398, section 7 of House Bill No. 1047, chapter 457, section 8 of House Bill No. 1124, chapter 459, section 10 of Senate Bill No. 2034, chapter 460, section 1 of House Bill No. 1072, chapter 462, and section 1 of Senate Bill No. 2208, chapter 463.

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 partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level. The total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity. An individual taxpayer may take the credit passed through under this subsection against the individual's state income tax liability under 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 that were 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 who made the purchase; and
  - b. An itemization of:
    - (1) Each item of machinery or equipment purchased for automation;
    - (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. 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.

**SECTION 15. EXEMPTION.** The amount appropriated for the agricultural products utilization commission in section 1 of chapter 46 of the 2009 Session Laws is not subject to section 54-44.1-11 and any unexpended funds from this line item for grants are available for grants during the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 16. EXEMPTION.** The amount appropriated for the discretionary funds line item in section 1 of chapter 46 of the 2009 Session Laws is not subject to section 54-44.1-11 and any unexpended funds from this line item are available during the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 17. EXEMPTION - TRANSFER.** The amount appropriated for internships contained in the operating expenses line item in section 1 of chapter 46 of the 2009 Session Laws is not subject to section 54-44.1-11. The office of management and budget shall transfer any unexpended funds from this appropriation to the internship fund at the end of the 2011-13 biennium.

**SECTION 18. EXEMPTION - TRANSFER.** Of the \$5,000,000 appropriated for the great plains applied energy research center in section 1 of chapter 26 of the 2009 Session Laws, \$4,100,000 is not subject to section 54-44.1-11. The department of commerce shall spend these funds for the purposes provided for in this section, for the biennium beginning July 1, 2011, and ending June 30, 2013. The office of management and budget shall transfer \$1,000,000 of these funds to the North Dakota development fund, incorporated, for the purpose of providing investments to startup stage technology-based businesses under section 4 of this Act. The office of management and budget shall transfer \$1,125,000 of these funds to the workforce enhancement fund for the purpose of implementing and administering sections 54-60-21 and 54-60-22. The department of commerce shall use \$750,000 of these funds for tourism infrastructure grants. The department of commerce shall use \$600,000 of these funds for a grant to assist in the acquisition of the antiballistic missile site at the Stanley R. Mickelson safeguard complex in Nekoma. The department of commerce shall use \$325,000 for providing a base realignment grant to enhance economic development and employment opportunities associated with the Minot air force base resulting from action by the federal defense base closure and realignment commission. The department of commerce shall use \$300,000 for a grant to a not-for-profit organization assisting individuals with business ideas.

**SECTION 19. EXEMPTION.** The amount appropriated for the technology-based entrepreneurship grant program contained in the grants line item in section 1 of chapter 46 of the 2009 Session Laws is not subject to section 54-44.1-11 and any unexpended funds from this line item are available during the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 20. EXEMPTION.** The amount appropriated for early childhood facility grants in section 6 of chapter 108 of the 2009 Session Laws is not subject to section 54-44.1-11 and any unexpended funds from this line item are available during the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 21. EXEMPTION.** The amount appropriated for the biofuel blender pump incentive program in sections 1 and 2 of chapter 46 of the 2009 Session Laws is not subject to section 54-44.1-11 and any unexpended funds from this line item are available during the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 22. EXEMPTION.** The amount appropriated for the promotion and marketing of the USS North Dakota contained in the grants line item in section 1 of chapter 46 of the 2009 Session Laws is not subject to section 54-44.1-11 and any unexpended funds from this line item are available during the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 23. TRANSFER - WORKFORCE ENHANCEMENT FUND.** The office of management and budget shall transfer the amount appropriated in the workforce enhancement line item in section 1 of this Act to the workforce enhancement fund for the purpose of implementing and administering sections 54-60-21 and 54-60-22 for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 24. TRANSFER - CENTERS OF RESEARCH EXCELLENCE FUND - USES.** The office of management and budget shall transfer the amount appropriated in the centers of research excellence line item in section 1 of this Act to the centers of research excellence fund for the purpose of implementing and administering the centers of research excellence grants, for the biennium beginning July 1, 2011, and ending June 30, 2013. Of the funds transferred, the centers of excellence commission may use up to \$4,000,000 for a limited deployment-cooperative airspace project grant as provided in section 28 of this Act. Of the \$8,000,000 remaining, the centers of

excellence commission may not award more than \$4,000,000 to one research university or nonprofit foundation related to that research university. Of the \$4,000,000 available to the university of North Dakota, \$3,000,000 shall be used for base realignment grants. The commission may use any funds that are not committed within the first eighteen months of the biennium for the centers of research excellence program.

**SECTION 25. TRANSFER - INTERNSHIP FUND.** The office of management and budget shall transfer \$900,000 of the amount appropriated in the operating expenses line item in section 1 of this Act to the internship fund.

**SECTION 26. TRADE OFFICE - MATCHING FUND REQUIREMENT.** The total North Dakota trade office special line and the general fund appropriation in section 1 of this Act include \$2,613,400 of funding relating to the North Dakota trade office. The department of commerce may spend seventy percent of this amount without requiring any matching funds from the trade office. Any additional amounts may be spent only to the extent that the North Dakota trade office provides \$1 of matching funds from private or other public sources for each \$1 provided by the department for the biennium beginning July 1, 2011, and ending June 30, 2013. 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 27. APPROPRIATION - DEPARTMENT OF HUMAN SERVICES.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$3,100,000, or so much of the sum as may be necessary, to the department of human services, for the purpose of providing grants to child care service providers for workforce development, quality improvement, technical assistance, and capacity building as provided for in section 50-11.1-14.1, for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 28. CENTERS OF RESEARCH EXCELLENCE LIMITED DEPLOYMENT-COOPERATIVE AIRSPACE PROJECT GRANT.** The department of commerce may use \$4,000,000 of the funds transferred to the centers of research excellence fund in section 24 of this Act for grants to the North Dakota university system's research institutions for the purpose of leveraging private and federal funding to advance state opportunities associated with a limited deployment-cooperative airspace project in the state during the biennium beginning July 1, 2011, and ending June 30, 2013. Up to \$2,700,000 of this amount may be awarded to the university of North Dakota and up to \$1,300,000 to North Dakota state university. The commissioner of commerce shall develop application criteria, review submitted applications, and recommend applications for approval to the centers of excellence commission. The commission may use any funds available under this section which are not committed by July 1, 2012, for the centers of research excellence program. Of the remaining available funds, the commission may not award more than one-half to one research university or nonprofit foundation related to that research university.

**SECTION 29. NORTH DAKOTA ECONOMIC DEVELOPMENT FOUNDATION - 2020 AND BEYOND INITIATIVE.**

1. During the 2011-12 interim, the North Dakota economic development foundation shall contract with an organization with North Dakota business membership which is statewide in scope and represents business interests across the state in order to conduct a 2020 and beyond initiative. The 2020 and beyond initiative must include periodic meetings of six legislators



appointed by the chairman of the legislative management, with two members of the senate, one of whom must be from the majority party and one of whom must be from the minority party and two members of the house of representatives, one of whom must be from the majority party and one of whom must be from the minority party; individuals representing North Dakota business interests, individuals representing North Dakota education interests, and individuals representing state and local government interests.

2. The 2020 and beyond initiative must:
  - a. Assess current assets and resources of the state and whether these assets and resources match the emerging opportunities and trends in the state;
  - b. Study and assess successful models of other states and countries in creating economic growth and whether those models could be replicated and improved upon in this state;
  - c. Evaluate the effectiveness of programs and investments in the state designed to develop the state's workforce and to attract and retain businesses in the state;
  - d. Identify impediments to and opportunities for economic growth and job creation in the state;
  - e. Consider what new investments in infrastructure and changes to the state's tax and regulatory environment could be made to maintain and increase the state's standing as a business-friendly state;
  - f. Evaluate the state's higher education model to determine whether maximum opportunities for synergy between public and private sectors are being realized;
  - g. Consider how higher education institutions in the state could spur economic development in the state through innovation, knowledge transfer, and community engagement;
  - h. Find ways to unite public, nonprofit, and business interests behind common goals and solutions for faster, better results; and
  - i. Make recommendations to the North Dakota economic development foundation based on the outcome of the initiative.
3. The legislative members of the 2020 and beyond initiative are entitled to receive compensation and expenses from the legislative council in the same manner as provided for members of the legislative management committees under section 54-35-10.
4. The grants line item in section 1 of this Act includes the sum of \$50,000 from the general fund for providing a grant to implement the 2020 and beyond initiative.

**SECTION 30. DEPARTMENT OF COMMERCE GRANT - INSTITUTION OF HIGHER EDUCATION VACCINOLOGY INITIATIVE.** Of the funds appropriated in the discretionary funds line item in section 1 of this Act, \$50,000 from the general fund

may be used by the department of commerce to provide a matching grant to an institution of higher education for a vaccinology initiative. The department shall require one dollar of matching funds from the institution for each one dollar of state funds awarded as a grant.

**SECTION 31. LEGISLATIVE MANAGEMENT STUDY - EXAMINATION OF POPULATION GROWTH IMPACT ON REVENUES.** During the 2011-12 interim, the legislative management shall consider studying the development of a reliable means of estimating the effect of future population growth on state and local government revenues. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

**SECTION 32. LEGISLATIVE MANAGEMENT STUDY - EARLY CHILDHOOD SERVICES PROVIDER TRAINING AND ASSISTANCE.** During the 2011-12 interim, the legislative management shall consider studying the means by which training and assistance are provided to early childhood services providers and the efficiency of administering training and assistance to early childhood services providers, including whether there is duplication of efforts. The study should review the effectiveness of funding provided to the department of human services for early childhood care, including workforce development, child care capacity, and quality improvement for early childhood facilities, for the 2009-11 biennium and to the department of commerce for financing to early childhood facilities and early childhood facility grants for technical assistance, a business plan, or infrastructure for the 2009-11 biennium. The study should also consider the effectiveness of funding provided to the department of human services for child care service provider grants for the 2011-13 biennium. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

**SECTION 33. LEGISLATIVE INTENT - CENTER OF RESEARCH EXCELLENCE PROGRAM CONTINUITY.** It is the intent of the sixty-second legislative assembly that the center of research excellence program be considered an ongoing program of the department of commerce.

**SECTION 34. REPEAL.** Chapter 15-69 of the North Dakota Century Code is repealed.

**SECTION 35. EFFECTIVE DATE.** Section 34 of this Act becomes effective on August 1, 2023.

**SECTION 36. EXPIRATION DATE.** Section 9 of this Act is effective through July 31, 2013, and after that date is ineffective. Section 11 of this Act is effective through June 30, 2013, and after that date is ineffective.

**SECTION 37. EFFECTIVE DATE - EXPIRATION DATE.** Sections 13 and 14 of this Act are effective for the first three taxable years beginning after December 31, 2012, and are thereafter ineffective.

**SECTION 38. EMERGENCY.** Funding of \$900,000 in the operating expenses line item in section 1 of this Act, relating to the operation intern program, and sections 9, 10, and 18 of this Act are declared to be an emergency measure.

Approved May 5, 2011  
Filed May 5, 2011

## CHAPTER 51

### SENATE BILL NO. 2163

(Senators Dever, J. Lee, Mathern)  
(Representatives N. Johnson, Metcalf, J. Nelson)

AN ACT to provide an appropriation to the department of human services for traumatic brain injury services.

#### **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 \$110,000, or so much of the sum as may be necessary, to the department of human services for the purpose of providing traumatic brain injury case management services in eastern North Dakota, for the biennium beginning July 1, 2011, and ending June 30, 2013.

Approved April 26, 2011

Filed April 26, 2011

## CHAPTER 52

### SENATE BILL NO. 2275

(Senators Wardner, Lyson, Robinson)  
(Representatives D. Johnson, Sanford, Williams)

AN ACT to provide an appropriation to the office of management and budget for community service supervision grants; and to provide legislative intent.

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

**SECTION 1. APPROPRIATION - COMMUNITY SERVICE SUPERVISION GRANTS - FUNDING ALLOCATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$375,000, or so much of the sum as may be necessary, to the office of management and budget for the purpose of providing community service supervision grants, for the biennium beginning July 1, 2011, and ending June 30, 2013. The office of management and budget shall distribute the grant funds on an annual basis on August first of each year of the 2011-13 biennium to North Dakota community corrections association regions as follows:

Barnes County	\$9,091
Bismarck (urban)	20,293
Bismarck (rural)	10,667
Devils Lake	10,747
Dickinson	12,683
Fargo	24,127
Grand Forks	19,803
Jamestown	13,883
Minot	16,194
Richland County	9,931
Rugby	11,657
Sargent County	8,086
Wells County	8,189
Williston	<u>12,149</u>
Total annual allocation	\$187,500

**SECTION 2. LEGISLATIVE INTENT.** It is the intent of the sixty-second legislative assembly that the funds appropriated in section 1 of this Act are considered ongoing funding and that the funds be a part of the office of management and budget's base budget as a separate line item for the 2013-15 biennium.

Approved April 26, 2011  
Filed April 26, 2011

## CHAPTER 53

### SENATE BILL NO. 2325

(Senators Wanzek, Erbele, G. Lee, Nodland)  
(Representatives Headland, Weisz)

AN ACT to provide an appropriation to the upper great plains transportation institute; and to provide for a report.

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

**SECTION 1. APPROPRIATION - UPPER GREAT PLAINS TRANSPORTATION INSTITUTE - BUDGET SECTION REPORTS.** There is appropriated out of any moneys in the oil and gas impact grant fund in the state treasury, not otherwise appropriated, the sum of \$350,000, or so much of the sum as may be necessary, to the upper great plains transportation institute for the purpose of updating and maintaining reports for transportation infrastructure needs for all county and township roads in the state, for the biennium beginning July 1, 2011, and ending June 30, 2013. During the 2011-12 interim, the upper great plains transportation institute shall report at least annually to the budget section of the legislative management regarding the status of the reports and shall present updated reports to the sixty-third legislative assembly.

Approved April 27, 2011  
Filed April 27, 2011

# GENERAL PROVISIONS

## CHAPTER 54

### HOUSE BILL NO. 1039

(Legislative Management)  
(Judiciary Committee)

AN ACT to amend and reenact subdivision a of subsection 2 of section 14-15-17, section 15-12-25, subsections 2 and 3 of section 15-52-03, sections 23-34-02, 23-34-02.1, 43-04-40, 43-53-04, 50-06-05.1, 57-38-30, and 57-43.2-02.3, subsection 1 of section 61-06-13, subsection 5 of section 61-07-03, section 61-11-03, and subdivision a of subsection 2 of section 65-02-03.1 of the North Dakota Century Code, relating to technical corrections and improper, inaccurate, redundant, missing, or obsolete references; and to repeal sections 4-32-09 and 40-05-21 of the North Dakota Century Code, relating to obsolete provisions.

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

**SECTION 1. AMENDMENT.** Subdivision a of subsection 2 of section 14-15-17 of the North Dakota Century Code is amended and reenacted as follows:

2. a. To obtain a validation of a foreign decree of adoption, the adoptive parent shall provide to the court a petition for validation of foreign adoption, an admission stamp in the adopted individual's passport which indicates that the individual was admitted to the United States with an IH-3 or IR-3 visa, the individual's foreign birth certificate and English translation, the individual's foreign adoption decree and English translation, and a signed affidavit from the agency which states that the foreign adoption is valid and which states the name by which the individual is to be known. The petition for validation of foreign adoption must be signed and verified by the petitioner, filed with the clerk of the court, and state:
  - (1) The date and place of birth of the individual to be adopted, if known;
  - (2) The name to be used for the individual whose foreign adoption decree is being petitioned for validation;
  - (3) The date the petitioner acquired custody or the date of placement of the individual and the name of the foreign country's placing agency;
  - (4) The full name, age, place, and duration of residence of the petitioner; and
  - (5) The marital status of the petitioner, including the date and place of marriage, if married.

**SECTION 2. AMENDMENT.** Section 15-12-25 of the North Dakota Century Code is amended and reenacted as follows:

### 15-12-25. Grants and contributions - Continuing appropriation.

The economic feasibility institute may contract for, accept, and receive grants, gifts, and contributions of money, property, services, or other things of value from individuals, the federal government, limited liability companies, private and public corporations, political subdivisions of the state, and other sources. All revenue received from gifts, grants, and contributions is hereby appropriated for use by the economic feasibility institute in carrying out the provisions of sections 15-12-22 through 15-12-26. ~~Any state funding for the institute may be provided through legislative appropriation to technology transfer, incorporated, for that purpose.~~

**SECTION 3. AMENDMENT.** Subsections 2 and 3 of section 15-52-03 of the North Dakota Century Code are amended and reenacted as follows:

2. The council consists of fifteen members:
  - a. (1) Two members of the senate, one of whom must be from the majority party and one of whom must be from the minority party, selected by the chairman of the legislative management; and
  - (2) Two members of the house of representatives, one of whom must be from the majority party and one of whom must be from the minority party, to be selected by the chairman of the legislative management;
  - b. One member selected by each of the following:
    - (1) The department of human services;
    - (2) The state board of higher education;
    - (3) The state department of health;
    - (4) The North Dakota medical association;
    - (5) The North Dakota ~~healthcare~~ hospital association;
    - (6) The veterans administration hospital in Fargo; and
    - (7) The university of North Dakota center for rural health; and
  - c. Four members selected by the dean of the university of North Dakota school of medicine and health sciences, one from each of the four campuses of the school of medicine and health sciences with headquarters in Bismarck, Fargo, Grand Forks, and Minot.
3. The representatives named by the state agencies and boards must be selected to serve as members of the advisory council for periods of at least one year, but may not serve longer than their term of office on the public agency. The representatives from the North Dakota state medical association and the North Dakota ~~healthcare~~ hospital association shall serve a term of three years or until their successors are named and qualified.

**SECTION 4. AMENDMENT.** Section 23-34-02 of the North Dakota Century Code is amended and reenacted as follows:

**23-34-02. Peer review records - Confidentiality.**

1. Peer review records are confidential and may be used by a peer review organization and the organization members only for conducting a professional peer review.
2. A health care organization may release reports, data compilations, analyses, and summaries, which are prepared by a peer review organization and which identify or analyze trends in medical errors to the state department of health, the North Dakota ~~healthcare~~hospital association, and the North Dakota hospital foundation.
3. The state department of health, the North Dakota ~~healthcare~~hospital association, and the North Dakota hospital foundation may release any information provided under subsection 2 to the public.
4. This section does not prohibit access of the state department of health to peer review records to determine compliance with requirements of federal or state law for the survey and certification of a health care facility or for trauma center designation and as authorized under any rules issued under section 23-01.2-01 or 23-01-11 to enable the state to be in compliance with any federal laws to qualify for any federal funds related to medical facilities or agencies licensed by the state department of health.

**SECTION 5. AMENDMENT.** Section 23-34-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**23-34-02.1. Peer review organization reports - Admissibility.**

Any report, data, data compilation, analyses, or summary that is generated by a peer review organization and made available to the state department of health or the public by the state department of health, the North Dakota ~~healthcare~~hospital association, or the North Dakota hospital foundation, may not be introduced into evidence, for any purpose, in any civil or administrative proceeding.

**SECTION 6. AMENDMENT.** Section 43-04-40 of the North Dakota Century Code is amended and reenacted as follows:

**43-04-40. Refusal and revocation of certificate.**

The board either may refuse to issue or renew a certificate of registration to practice barbering or may suspend or revoke the same for any one, or a combination, of the following causes:

1. Conviction of an offense, shown by a certified copy of the record of conviction, determined by the board to have a direct bearing upon a person's ability to serve the public as a barber, or the board determines, following conviction of any offense, that the person is not sufficiently rehabilitated under section 12.1-33-02.1.
2. Gross malpractice or gross incompetency.
3. Continued practice by a person knowingly having an infectious or contagious disease.



4. Habitual drunkenness or habitual addiction to the use of morphine, cocaine, or other habit-forming drug.
5. Advertising by means of knowingly false or deceptive statements.
6. Immoral and unprofessional conduct.
7. When satisfied that any such person has violated any provision of this chapter.
8. Repeated violations of the ~~sanitary rules and regulations of the state board of health and board of barber examiners~~ governing the ~~sanitary regulations~~ regulation of barbershops and barber schools.

**SECTION 7. AMENDMENT.** Section 43-53-04 of the North Dakota Century Code is amended and reenacted as follows:

**43-53-04. Marriage and family ~~therapist~~therapy licensure board.**

1. The North Dakota marriage and family ~~therapist~~therapy licensure board consists of five members. The governor shall appoint the board members to serve terms of four years, except for those first appointed one member must continue in office for two years, two for three years, and two, including the chairman, for four years.
2. The governor shall appoint members of the board from among individuals who meet the following qualifications:
  - a. At least three members must be licensed practicing marriage and family therapists; and each must have been for at least five years immediately preceding appointment actively engaged as marriage and family therapists in rendering professional services in marriage and family therapy; in the education and training of master's, doctoral, or postdoctoral students of marriage and family therapy; or in marriage and family therapy research. A member under this subdivision must have spent the majority of the time devoted by that member to such activity during the two years preceding appointment residing in this state.
  - b. At least one member must be a representative of the general public and may not have any direct affiliation with the practice of marriage and family therapy or another mental health profession.
  - c. The initial appointees, with the exception of any representative of the general public, are deemed to be and become licensed practicing marriage and family therapists immediately upon appointment and qualification as members of the board.
3. The governor shall nominate a new member to fill a vacancy on the board within thirty days of the vacancy. A member chosen to fill a board vacancy must be appointed for the unexpired term of the board member whom that member is succeeding. Upon the expiration of a member's term of office, a board member shall continue to serve until a successor is appointed. An individual may not be appointed more than once to fill an unexpired term or appointed to more than two consecutive full terms. A member may not serve as chairman for more than four years. The appointment of any member of the board automatically terminates thirty days after the date the member is no longer a resident of this state.

4. The governor may remove any member of the board or the chairman from the position as chairman for neglect of duty or malfeasance or conviction of a felony or crime of moral turpitude while in office, but for no other reason. A member may not be removed until after a hearing on the charges and at least thirty days' prior written notice to such accused member of the charges and of the date fixed for such hearing.
5. A board member may not participate in any matter before the board in which that member has a pecuniary interest, personal bias, or other similar conflict of interest. A board member shall serve without compensation but is entitled to be reimbursed for the member's actual and necessary expenses incurred in the performance of official board business.

**SECTION 8. 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 or otherwise as directed by it:

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 social legislation to the legislative assembly.
8. To direct and supervise county social service board activities as may be financed in whole or in part by or with funds allocated or distributed by the department.
9. To inform the public as to social conditions and ways of meeting social needs.
10. 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.

11. 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 child care facilities, 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.
12. To permit the making of any surveys of human service needs and activities if determined to be necessary.
13. 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.
14. 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 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 developmental center at westwood park, Grafton, state hospital, or North Dakota youth correctional center.
15. 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, all reports to be kept confidential for the use of the judge except as may be disclosed by the judge.
16. 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, all reports to be kept confidential for use by the judge except as may be disclosed by the judge.
17. To act as the official agency of the state in the administration of the food stamp program and to direct and supervise county 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.

18. 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.
19. To act as the official agency of the state in the administration of the 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 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.
20. 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.
21. To exercise and carry out any other powers and duties granted the department under state law.
22. To coordinate services for pregnant women.
23. 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, identified by a licensed child-placing agency and 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.
24. With the approval of the governor, to lease or transfer use of any part of the developmental 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 developmental 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.
25. To act as a decedent's successor for purposes of collecting amounts due to 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.
26. To provide those services necessary for the department and for county social service boards 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.
- ~~27. To provide for the qualifications for and the membership of a qualified board as required by section 12.1-32-15.~~
- ~~28.~~ 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.
- 29-28. Notwithstanding section 50-01.2-00.1, to determine eligibility for medical assistance and children's health insurance program benefits when the department receives a joint application for these benefits.

<sup>14</sup> **SECTION 9. AMENDMENT.** Section 57-38-30 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-30. Imposition and rate of tax on corporations.**

A tax is hereby imposed upon the taxable income of every domestic and foreign corporation which must be levied, collected, and paid annually as in this chapter provided:

1. ~~a.~~ For the first twenty-five thousand dollars of taxable income, at the rate of two and one-tenth percent.
- ~~b.2.~~ On all taxable income exceeding twenty-five thousand dollars and not exceeding fifty thousand dollars, at the rate of five and twenty-five hundredths percent.
- ~~c.3.~~ On all taxable income exceeding fifty thousand dollars, at the rate of six and four-tenths percent.
2. ~~A corporation that has paid North Dakota alternative minimum tax in years beginning before January 1, 1991, may carry over any alternative minimum tax credit remaining to the extent of the regular income tax liability of the corporation for a period not to exceed four taxable years.~~

**SECTION 10. AMENDMENT.** Section 57-43.2-02.3 of the North Dakota Century Code is amended and reenacted as follows:

**57-43.2-02.3. Exemptions.**

1. Special fuel commonly known as diesel fuel which is dyed for federal fuel tax exemption purposes and sold for an agricultural, industrial, or railroad purpose is exempt from the special fuel tax imposed by section 57-43.2-02 at the time the fuel is sold to the consumer and is subject instead to the tax imposed by section 57-43.2-03. Special fuel known as diesel fuel which is dyed for federal fuel tax exemption purposes and sold for use as heating fuel is exempt from the special fuel tax imposed by ~~section 57-43.2-02 and subject to a tax at a rate of two cents per gallon under section 57-43.2-03 from January 1, 2008, through June 30, 2009, and after that date is exempt from the special fuel tax imposed by sections 57-43.2-02 and 57-43.2-03.~~ Fuel purchased for use in a licensed motor vehicle is not exempt from the tax imposed by section 57-43.2-02.
2. Special fuel, other than diesel fuel, sold for an agricultural, industrial, or railroad purpose is exempt from the special fuel tax imposed by section 57-43.2-02 at the time the fuel is sold to the consumer and is subject instead to the tax imposed by section 57-43.2-03. Propane sold for use as heating fuel is exempt from the special fuel tax imposed by ~~section 57-43.2-02 and subject to a tax at a rate of one percent under section 57-43.2-03 from January 1, 2008, through June 30, 2009, and thereafter is exempt from the special fuel tax imposed by sections 57-43.2-02 and 57-43.2-03 at the time the fuel is sold to the consumer.~~ Special fuel, other than diesel fuel and propane, sold for use as heating fuel is exempt from the special fuel tax imposed by ~~section 57-43.2-02 and subject to a tax at a rate of two cents per gallon under section~~

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<sup>14</sup> Section 57-38-30 was also amended by section 6 of House Bill No. 1047, chapter 457.

~~57-43.2-03 from January 1, 2008, through June 30, 2009, and thereafter is exempt from the special fuel tax imposed by sections 57-43.2-02 and 57-43.2-03 at the time the fuel is sold to the consumer. Fuel purchased for use in a licensed motor vehicle is not exempt from the tax imposed by section 57-43.2-02.~~

- 3. A consumer purchasing special fuel for a use in which it becomes an ingredient or a component part of tangible personal property intended to be sold ultimately at retail is exempt from the tax imposed by section 57-43.2-02 and is not subject to the tax imposed by section 57-43.2-03.

**SECTION 11. AMENDMENT.** Subsection 1 of section 61-06-13 of the North Dakota Century Code is amended and reenacted as follows:

- 1. At least fifteen days before an election in an irrigation district, the secretary shall prepare and have ~~typewritten, mimeographed, or printed~~ an official ballot containing the names of all candidates which have been filed with the secretary. The ballot must:
  - a. Be headed "Official Ballot";
  - b. Contain all names thus filed;
  - c. Show the name of the district;
  - d. State the number of individuals to be voted for;
  - e. Have blank spaces below for writing in other names; and
  - f. State any question or resolution submitted to the electors by the board of directors.

**SECTION 12. AMENDMENT.** Subsection 5 of section 61-07-03 of the North Dakota Century Code is amended and reenacted as follows:

- 5. Establish bylaws and rules for distribution to and for the information of electors of the district and water users, and fix charges or rentals to be paid by water users. The bylaws and rules shall be ~~printed, typewritten, or mimeographed~~ in convenient form.

**SECTION 13. AMENDMENT.** Section 61-11-03 of the North Dakota Century Code is amended and reenacted as follows:

**61-11-03. Ballots to be provided - Form.**

The board shall provide ~~printed, typewritten, or mimeographed~~ ballots for an election held pursuant to the provisions of this chapter. Such ballots shall be substantially in the following form:

The irrigation district of \_\_\_\_\_ County, North Dakota, shall be dissolved and its property sold:

Yes

No

The board shall cause such ballots to be prepared at least fifteen days before the election and shall place the ballots in the hands of the election officers of the district prior to the opening of the polls on the day of such election.

**SECTION 14. AMENDMENT.** Subdivision a of subsection 2 of section 65-02-03.1 of the North Dakota Century Code is amended and reenacted as follows:

- 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 ~~health care~~ hospital association, the national federation of independent business, the lignite energy council, and other statewide business interests.

**SECTION 15. REPEAL.** Sections 4-32-09 and 40-05-21 of the North Dakota Century Code are repealed.

Approved April 18, 2011  
Filed April 18, 2011



## CHAPTER 55

### HOUSE BILL NO. 1167

(Representatives Grande, Heller, R. Kelsch)  
(Senators Krebsbach, Sitte, Nelson)

AN ACT to create and enact a new section to chapter 1-03 of the North Dakota Century Code, relating to women veterans' month; and to declare an emergency.

#### **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:

#### **Women Veterans' Month.**

March of each year is Women Veterans' Month. Each year the governor shall issue a proclamation on March first in honor and remembrance of surviving and departed women veterans who have served honorably and with courage on behalf of the United States of America since the American Revolutionary War.

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

Approved March 29, 2011  
Filed March 29, 2011

## CHAPTER 56

### SENATE BILL NO. 2330

(Senators Schaible, Klein)  
(Representatives Guggisberg, S. Kelsh)

AN ACT to create and enact a new section to chapter 1-03 of the North Dakota Century Code, relating to fallen firefighters memorial weekend.

#### **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:

#### **Firefighters memorial weekend.**

Each year the governor shall issue a proclamation designating the dates of the national fallen firefighters memorial weekend as the North Dakota fallen firefighters memorial weekend and require that flags at state buildings be flown at half staff.

Approved April 25, 2011  
Filed April 25, 2011

# AERONAUTICS

## CHAPTER 57

### HOUSE BILL NO. 1132

(Government and Veterans Affairs Committee)  
(At the request of the North Dakota Aeronautics Commission)

AN ACT to amend and reenact sections 2-05-03, 2-05-04, 2-05-05, and 2-05-06.5, subsection 3 of section 2-05-11.1, and sections 2-05-11.3 and 57-43.3-06 of the North Dakota Century Code, relating to the powers and duties of the aeronautics commission and the distribution of aviation fuel tax revenue; to repeal sections 2-05-06.4, 2-05-08, 2-05-12, 2-05-15, 2-05-15.1, 2-05-16, and 2-05-17 of the North Dakota Century Code, relating to the powers and duties of the aeronautics commission; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 2-05-03 of the North Dakota Century Code is amended and reenacted as follows:

##### **2-05-03. Powers and duties of director.**

The director shall be the executive officer of the commission. The director shall attend all meetings of the commission, but has no voting power. At the direction of the commission, the director shall, together with the chairman of the commission, execute all contracts entered into by the commission which are legally authorized. The director shall appoint, subject to the approval of the commission, such employees as may be necessary for the proper discharge of the functions of the commission. The director shall act as the agent of the tax commissioner for purposes of enforcement of chapter 57-40.5. ~~Whenever requested by the director of the department of transportation as provided in section 24-02-01.3, the director shall report administratively concerning all activities of the aeronautics commission.~~

**SECTION 2. AMENDMENT.** Section 2-05-04 of the North Dakota Century Code is amended and reenacted as follows:

##### **2-05-04. Commission ~~organization~~—~~Reports~~reports - Offices.**

~~Within thirty days after its appointment, the commission shall organize and adopt rules for its administration as it may determine to be expedient.~~ The commission may submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04. The commission shall maintain its office in the state capitol or as authorized under section 54-21-24.

**SECTION 3. AMENDMENT.** Section 2-05-05 of the North Dakota Century Code is amended and reenacted as follows:

### **2-05-05. Duty of commission in development of aeronautics.**

The commission shall have general supervision over aeronautics within this state and shall:

1. Encourage the establishment of airports and air navigation facilities;
2. Cooperate with and assist the federal government, the municipalities of this state, and other persons in the development and coordination of all aeronautical activities;
3. Represent the state in aeronautical matters before state and federal agencies;  
~~and~~
4. Participate as party plaintiff or defendant or as intervener on behalf of the state or any municipality ~~or citizen thereof~~ in any controversy which involves the interest of the state in aeronautics;
5. Establish or promote with the public sector or private sector, or both, and provide financing, in whole or in part, of aeronautical educational programs and support of the educational programs of aeronautical museums in the state; and
6. Establish or promote with the public sector or private sector, or both, and provide financing, in whole or in part, of programs informing the public of commercial and general aviation services available in the state.

**SECTION 4. AMENDMENT.** Section 2-05-06.5 of the North Dakota Century Code is amended and reenacted as follows:

#### **2-05-06.5. State assistance for airports.**

Each public airport owned or operated by a public entity and each airport operated by an airport authority in this state which is served by at least one airline which is certified by the federal aviation administration or was at one time served by an airline certified by the federal aviation administration, ~~but is served by a scheduled commuter airline certified by the North Dakota aeronautics commission~~ may be provided assistance according to guidelines established by the commission by rule, within the limits of legislative appropriations. The governing body or airport authority which operates an airport that receives assistance under this section shall deposit the moneys received in the same account or accounts as other airport funds are deposited and may expend the moneys as provided by law for other airport funds, including matching any funds made available by the United States.

**SECTION 5. AMENDMENT.** Subsection 3 of section 2-05-11.1 of the North Dakota Century Code is amended and reenacted as follows:

3. "Warbird aircraft" means ~~an~~ military aircraft ~~built before January 1, 1948, expressly for the purpose of no longer in~~ military service.

**SECTION 6. AMENDMENT.** Section 2-05-11.3 of the North Dakota Century Code is amended and reenacted as follows:

### **2-05-11.3. Fee for a permanent registration - Issuance of registration decal - Disposition of fee.**

The fee for a permanent registration under section 2-05-11.2 is eighty-five dollars. The commission shall prepare a distinctive decal denoting permanent registration under section 2-05-11.2. ~~That decal must be displayed in the aircraft in the same manner required for the registration decal otherwise issued under this chapter. The fee must be deposited in the aeronautics commission special fund.~~

**SECTION 7. AMENDMENT.** Section 57-43.3-06 of the North Dakota Century Code is amended and reenacted as follows:

#### **57-43.3-06. (Effective through June 30, 2011) Distribution of revenue.**

The tax collected by the commissioner pursuant to section 57-43.3-04 must be deposited by the commissioner in the office of the state treasurer, who shall deposit such moneys in a special fund known as the state aeronautics commission special fund. These funds are appropriated to the commission, and must be disbursed by warrant-check prepared by the office of management and budget upon vouchers submitted by the commission and approved by the office of management and budget, for commission administration and the purpose of providing up to ninety percent of the project costs if the political subdivision or airport authority is not qualified for or does not receive any funds under section 2-05-06.5. These funds must be used for airport construction or improvement projects, including airport administration and terminal buildings, hangars, landing strips for aircraft, and purchase of sites for airports or landing fields and easements and for maintenance and maintenance equipment, clearing of sites, marking, lighting, and engineering and navigational aids, all related to aeronautics in amounts as the commission may determine and upon projects as the commission may approve.

~~(Effective after June 30, 2011) Distribution of revenue. The tax collected by the commissioner pursuant to section 57-43.3-04 must be deposited by the commissioner in the office of the state treasurer, who shall deposit such moneys in a special fund known as the state aeronautics commission special fund. These funds are appropriated to the commission, and must be disbursed by warrant check prepared by the office of management and budget upon vouchers submitted by the commission and approved by the office of management and budget, for commission administration and the purpose of matching of any funds made available by political subdivisions or airport authorities of this state, the state, or the United States, only if the political subdivision or airport authority is not qualified for or does not receive any funds under section 2-05-06.5. These funds must be used for airport construction or improvement projects, including airport administration and terminal buildings, hangars, landing strips for aircraft, and purchase of sites for airports or landing fields and easements and for maintenance, clearing of sites, marketing, lighting, and engineering and navigational aids, all related to aeronautics in amounts as the commission may determine and upon projects as the commission may approve.~~

**SECTION 8. REPEAL.** Sections 2-05-06.4, 2-05-08, 2-05-12, 2-05-15, 2-05-15.1, 2-05-16, and 2-05-17 of the North Dakota Century Code are repealed.

**SECTION 9. EMERGENCY.** Section 7 of this Act is declared to be an emergency measure.

Approved April 11, 2011  
Filed April 11, 2011

## CHAPTER 58

### SENATE BILL NO. 2206

(Senators Miller, Olafson, Murphy)  
(Representatives Belter, Boe, Schmidt)

AN ACT to create and enact a new section to chapter 2-05 of the North Dakota Century Code, relating to anemometer towers; to provide a penalty; to provide an appropriation; to provide for application; and to declare an emergency.

#### 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:

##### **Anemometer towers - Definitions - Penalty.**

1. As used in this section, unless the context otherwise requires:
  - a. "Anemometer" means an instrument for measuring and recording the speed of wind.
  - b. "Anemometer tower" means a structure, including all guy wires and accessory facilities, on which an anemometer is mounted for the purposes of documenting wind resources for the operation of a wind turbine generator.
  - c. "Commission" means the North Dakota aeronautics commission.
2. An anemometer tower that is fifty feet [15.24 meters] in height above the ground or higher, is located outside the zoning jurisdiction of a city, and the appearance of which is not otherwise regulated by state or federal law must be marked, painted, flagged, or otherwise constructed to be recognizable in clear air during daylight hours and:
  - a. Must be painted in equal, alternating bands of orange and white, beginning with orange at the top of the tower and ending with orange at the bottom of the tower;
  - b. One or more seven-foot [2.13-meter] safety sleeves must be placed at each anchor point and must extend from the anchor point along each guy wire attached to the anchor point; and
  - c. At least one marker ball must be attached to each guy wire in the highest set of guy wires which does not affect the stability of the tower and the measurement of wind speed.
3. The commission may establish and maintain a database that contains locations of all existing anemometer towers by January 1, 2012. The commission may contract with a governmental entity or a private entity to create and maintain the database.

- a. Within sixty days after the effective date of this Act, an owner of any anemometer tower erected in the state shall provide the commission with global positioning system coordinates of the center of the anemometer tower.
  - b. At least ten days before the erection of an anemometer tower, an owner of the tower shall provide coordinates to the commission.
  - c. Within ten days after the removal of an anemometer tower, an owner of the tower shall notify the commission.
4. The commission may enforce this section. A violation of this section is an infraction.

**SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$4,500, or so much of the sum as may be necessary, to the aeronautics commission for the purpose of establishing a database for anemometer towers, for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 3. APPLICATION.** Any anemometer tower that was erected before August 1, 2011, must be marked as required in this Act before August 1, 2014. Any anemometer tower that is erected after July 31, 2011, must be marked as required in this Act at the time the tower is erected. An anemometer tower that has been erected in an existing wind energy generating facility on the effective date of this Act is exempt from the provisions of this Act.

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

Approved April 26, 2011  
Filed April 26, 2011

# AGRICULTURE

## CHAPTER 59

### HOUSE BILL NO. 1244

(Representative M. Nelson)

AN ACT to create and enact a new section to chapter 4-01 of the North Dakota Century Code, relating to equine carcasses.

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

**SECTION 1.** A new section to chapter 4-01 of the North Dakota Century Code is created and enacted as follows:

#### **Equine slaughter - Establishments.**

The agriculture commissioner shall monitor federal statutory and regulatory actions related to the slaughter of horses, mules, and other equines, and in particular, those actions pertaining to the establishments in which the slaughter and preparation of the carcasses may take place. The agriculture commissioner may pursue or support federal legislative, regulatory, or contractual avenues that would allow for the slaughter and processing of horses, mules, and other equines in this state, without the restriction that the slaughter or product preparation be conducted in establishments separate from any in which cattle, sheep, swine, or goats are slaughtered or their products are prepared.

Approved April 25, 2011

Filed April 25, 2011



## CHAPTER 60

### HOUSE BILL NO. 1341

(Representatives Kingsbury, Paur)  
(Senator Olafson)

AN ACT to amend and reenact section 4-02-27.3 of the North Dakota Century Code, relating to the disposition of property used for county fairs; and to repeal section 4-02-06 of the North Dakota Century Code, relating to the filing of agricultural fair exhibition dates.

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

**SECTION 1. AMENDMENT.** Section 4-02-27.3 of the North Dakota Century Code is amended and reenacted as follows:

##### **4-02-27.3. Disposition of property.**

Any property used for county fair purposes may be sold by the board of county commissioners upon such terms and conditions as the board shall determine, and the proceeds of such sale shall be placed in the county fair fund and used exclusively for county fair purposes, provided that if the county fails to hold a fair within the county for two successive years, any property on hand may be sold and the proceeds of such sale, together with any other unexpended balance in the county fair fund ~~may~~, at the discretion of the board of county commissioners, may be transferred to the county general fund. The levy of the tax authorized by section 4-02-27.2, expenditures of the proceeds thereof, and the conduct of the fair shall be governed by ~~the provisions of sections 4-02-06, 4-02-07~~ through 4-02-31 to the extent such sections are consistent with ~~the provisions of~~ section 4-02-27.2 and this section.

**SECTION 2. REPEAL.** Section 4-02-06 of the North Dakota Century Code is repealed.

Approved March 28, 2011  
Filed March 28, 2011

## CHAPTER 61

### HOUSE BILL NO. 1182

(Representatives Kingsbury, Mueller)  
(Senator Wanzek)

AN ACT to amend and reenact section 4-24-09 of the North Dakota Century Code, relating to investments of agricultural commodity funds.

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

**SECTION 1. AMENDMENT.** Section 4-24-09 of the North Dakota Century Code is amended and reenacted as follows:

#### **4-24-09. Agricultural commodity assessments funds - Investment income allocation.**

The state treasurer, notwithstanding any other provision of law to the contrary, shall invest in accordance with section 21-10-07 all available moneys in the spud fund, oilseed fund, dry bean fund, dry pea and lentil fund, barley fund, soybean fund, corn fund, honey fund, turkey fund, milk stabilization fund, dairy promotion commission fund, state wheat commission fund, ethanol fund, and the beef commission fund. The investment of moneys must be made in cooperation with the governing body of the respective agricultural commodity entity. The state treasurer, ~~by rule,~~ shall establish, in cooperation with the agricultural commodity organizations, guidelines to be followed regarding the investment of moneys in each fund. The state treasurer shall credit twenty percent of the investment income derived from each fund to the general fund in the state treasury as payment for accounting, printing, data processing, legal, and other services when provided without cost by the state to the agricultural commodity entity. The state treasurer shall credit eighty percent of the investment income derived from each fund to the respective fund.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 62

### HOUSE BILL NO. 1090

(Agriculture Committee)  
(At the request of the Agriculture Commissioner)

AN ACT to amend and reenact subsection 21 of section 4-30-01 and sections 4-30-36.2, 4-30-36.3, and 4-30-36.4 of the North Dakota Century Code, relating to dairy products regulations.

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

**SECTION 1. AMENDMENT.** Subsection 21 of section 4-30-01 of the North Dakota Century Code is amended and reenacted as follows:

21. "Pasteurized Milk Ordinance" means the ~~2007~~2009 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 4-30-36.2 of the North Dakota Century Code is amended and reenacted as follows:

#### **4-30-36.2. State milk sanitation rating and sampling surveillance officer - Duties - Guidelines.**

The state milk sanitation rating and sampling surveillance officer is responsible for the rating and certification of milk and dairy products. The rating and certification of milk and dairy products must be in accordance with the procedures outlined in the public health service/food and drug administration publication entitled "Methods of Making Sanitation Ratings of Milk Shippers - ~~2007~~2009 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 4-30-36.3 of the North Dakota Century Code is amended and reenacted as follows:

#### **4-30-36.3. Milk laboratory evaluations officer - Duties - Guidelines.**

The milk laboratory evaluations officer is responsible for the certification and evaluation of milk and dairy products laboratories within the state. Evaluations and certification of milk laboratories must be made in accordance with the Standard Methods and the procedures outlined in the public health service/food and drug administration publication entitled "Evaluation of Milk Laboratories - ~~2005~~2009 Edition".

**SECTION 4. AMENDMENT.** Section 4-30-36.4 of the North Dakota Century Code is amended and reenacted as follows:

**4-30-36.4. Grade A pasteurized milk ordinance.**

Dairy producers, processors, and manufacturers shall comply with the 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, ~~2007~~2009 Revision".

Approved March 14, 2011

Filed March 14, 2011

## CHAPTER 63

### HOUSE BILL NO. 1305

(Representatives Kingsbury, Paur)  
(Senator Olafson)

AN ACT to amend and reenact sections 4-37-01, 4-37-02, 4-37-03, and 4-37-04 of the North Dakota Century Code, relating to agriculture in the classroom.

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

**SECTION 1. AMENDMENT.** Section 4-37-01 of the North Dakota Century Code is amended and reenacted as follows:

##### 4-37-01. Agriculture in the classroom program.

Recognizing the need to promote and foster an understanding of the agricultural economy of the state of North Dakota and the values of rural lifestyles, an agriculture in the classroom program is hereby established ~~to be administered by an agriculture in the classroom council in conjunction with the~~. The agriculture commissioner shall administer the program with the advice of the agriculture in the classroom council.

**SECTION 2. AMENDMENT.** Section 4-37-02 of the North Dakota Century Code is amended and reenacted as follows:

##### 4-37-02. Agriculture in the classroom council.

1. ~~An~~ The agriculture in the classroom council is established. The council consists of sixteen members to be appointed by theseven individuals. The agriculture commissioner. One member must be the agriculture commissioner or the commissioner's designee, and one member must be shall appoint six council members. The seventh council member is the superintendent of public instruction or the superintendent's designee. Agriculture in the classroom grant recipients are nonvoting members of the council.
2. The council members may select one from among themselves to serve as the chairman.
3. The council shall meet at least twice each year, at the call of the chairman, for the purpose of providing advice to the agriculture commissioner regarding issues related to agriculture in the classroom.

**SECTION 3. AMENDMENT.** Section 4-37-03 of the North Dakota Century Code is amended and reenacted as follows:

##### 4-37-03. Purpose - Powers and duties.

1. ~~The agriculture in the classroom council may provide~~ commissioner may award grants and contract with any person for the provision of an agriculture in the classroom program, the development of agricultural curriculum activities applicable to students from kindergarten through grade twelve, and the training of teachers in agricultural curriculum activities.

- ~~2.~~ The council agriculture commissioner shall work with teachers, the superintendent of public instruction, the department of career and technical education, and the United States department of agriculture, and the state agriculture commissioner in accomplishing this purpose. The council to provide and promote an agriculture in the classroom program.
- ~~3.~~ In addition to any other powers and duties set forth in this section, the agriculture commissioner may:
  - ~~4-4.~~ Consult with the state superintendent of public instruction, the department of career and technical education, the state agriculture commissioner, and the United States department of agriculture, and any other public or nonpublic entities;
  - ~~2-5.~~ Prepare instructional, informational, and reference publications on the North Dakota agricultural economy and rural lifestyles;
  - ~~3-6.~~ Provide training programs for public school teachers in agricultural curriculum activities;
  - ~~4-7.~~ Encourage research on and identification of new instructional, informational, and reference publications relating to this state's agricultural economy and rural lifestyles; and
  - ~~5-8.~~ Monitor the quality and condition of the agriculture in the classroom program.

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

**4-37-04. Gifts and grants.**

~~The agriculture in the classroom council commissioner may accept and expend private contributions, gifts, and grants in aid from the federal government, private industry, and other sources. The council shall expend any moneys received under this section for the gifts, grants, and donations in support of the agriculture in the classroom program. If any gifts, grants, or donations are designated for a specific purpose if a, the commissioner shall honor the purpose is included as a condition of the gift, grant, or donation. The council may use all other moneys received under this section to carry out the purposes of provided the purpose is consistent with this chapter.~~

Approved March 14, 2011

Filed March 14, 2011

## CHAPTER 64

### SENATE BILL NO. 2222

(Senators Flakoll, Bowman, Heckaman)  
(Representatives D. Johnson, Boe, Brandenburg)

AN ACT relating to the development of crop insurance proposals; to provide for crop insurance development grants; and to provide an expiration date.

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

##### SECTION 1.

##### **Crop insurance development board - Membership - Terms.**

1. The crop insurance development board consists of:
  - a. The agriculture commissioner or the commissioner's designee;
  - b. One individual representing an agricultural organization in this state, appointed by the governor;
  - c. One individual representing an agricultural organization in this state, appointed by the agriculture commissioner;
  - d. One individual involved in the crop insurance industry, appointed by the governor; and
  - e. One individual involved in the crop insurance industry, appointed by the agriculture commissioner.
2. The term of each appointed member is two years and begins on July 1, 2011.
3. An appointed member may serve consecutive terms.
4. If at any time a member ceases to possess any of the qualifications required by this section or otherwise terminates the appointment, the member's office is deemed vacant and must be filled in the same manner as the original appointment.

##### SECTION 2.

##### **Crop insurance development board - Chairman.**

1. Biennially, the crop insurance development board shall elect one member to serve as the chairman. The chairman's term begins July 1, 2011. The chairman may serve consecutive terms.
2. The chairman shall call all meetings of the board.
3. The board shall meet as often as necessary to fulfill its duties under section 3 of this Act.

**SECTION 3.****Crop insurance development board - Duties.**

1. The crop insurance development board shall assess the feasibility and desirability of proposals submitted by individuals and by public and nonpublic entities pertaining to the development and implementation of crop insurance instruments. The board may authorize the awarding of grants to assist with future actuarial and development costs.
2. Grants may be awarded for up to seventy-five percent of the first fifty thousand dollars and up to fifty percent of the costs thereafter.
3. The board shall establish conditions pertaining to the receipt of grants, including the repayment of some or all of the grants with moneys received by the applicant from the federal crop insurance corporation for continued development of the proposal. The board shall forward any moneys received as repayments under this section to the state treasurer for deposit in the agricultural fuel tax fund.

**SECTION 4.****Access to board records.**

Materials and data submitted to, or made or received by, the board, to the extent that the board determines the materials or data consist of trade secrets or commercial, financial, or proprietary information of individuals or entities applying to or contracting with the board or receiving board services under this chapter are subject to section 44-04-18.4. The names or identities of the independent technical reviewers on any project or program are confidential and may not be disclosed by the board.

**SECTION 5. CROP INSURANCE DEVELOPMENT GRANTS.** During each biennium, the agricultural products utilization commission shall reserve \$150,000 from the agricultural fuel tax fund for the purpose of awarding grants that have been approved by the crop insurance development board in accordance with this Act. If any portion of the reserved amount remains unexpended at the conclusion of a biennium, the unexpended amount must also be made available for the purpose of awarding grants during the ensuing biennium.

**SECTION 6. EXPIRATION DATE.** This Act is effective through June 30, 2015, and after that date is ineffective.

Approved April 26, 2011  
Filed April 26, 2011



## CHAPTER 65

### SENATE BILL NO. 2134

(Senators Erbele, Christmann, Wanzek)  
(Representatives S. Meyer, Pollert, Heller)

AN ACT to amend and reenact sections 4.1-08-02, 4.1-08-06, and 4.1-08-07 of the North Dakota Century Code, relating to the assessment on colonies of honeybees; and to provide an expiration date.

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

**SECTION 1. AMENDMENT.** Section 4.1-08-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **4.1-08-02. Assessment.**

An annual assessment in the amount of ~~five~~<sup>ten</sup> cents is imposed on each colony of honeybees licensed by the beekeeper. The minimum annual assessment is one dollar.

**SECTION 2. AMENDMENT.** Section 4.1-08-06 of the North Dakota Century Code is amended and reenacted as follows:

##### **4.1-08-06. Assessment - Authorized expenditures.**

The assessment required by this chapter may be used to fund research, including efforts that focus on honeybee colony health; education programs; and market development efforts, as well as promotional efforts such as the North Dakota honey queen program.

**SECTION 3. AMENDMENT.** Section 4.1-08-07 of the North Dakota Century Code is amended and reenacted as follows:

##### **4.1-08-07. Commissioner - Powers.**

The commissioner may:

1. Expend moneys appropriated under this chapter for the purposes set forth in section 4.1-08-06, provided the commissioner first consults with ~~a committee appointed by the board of directors of~~ the North Dakota beekeepers' association; and
2. Do all things necessary and proper to enforce and administer this chapter.

**SECTION 4. EXPIRATION DATE.** This Act is effective through June 30, 2015, and after that date is ineffective.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 66

### HOUSE BILL NO. 1302

(Representatives D. Johnson, DeKrey, Mueller)  
(Senators Flakoll, Miller)

AN ACT to amend and reenact sections 4.1-11-02, 4.1-11-03, 4.1-11-04, and 4.1-11-05 of the North Dakota Century Code, relating to soybean council elections.

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

**SECTION 1. AMENDMENT.** Section 4.1-11-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **4.1-11-02. Soybean districts - Establishment.**

1. The state consists of the following eight soybean districts:
  1. a. Richland County;
  2. b. Dickey, LaMoure, Ransom, and Sargent Counties;
  3. c. Cass County;
  4. d. Barnes, Griggs, and Steele Counties;
  5. e. Traill County;
  6. f. Grand Forks County;
  7. g. Pembina, Nelson, and Walsh Counties; and
  8. h. All other North Dakota counties in which soybeans are grown.
2. Beginning April 1, 2012, the state consists of the following twelve soybean districts:
  - a. District one: Richland County;
  - b. District two: Ransom and Sargent Counties;
  - c. District three: Dickey and LaMoure Counties;
  - d. District four: Cass County;
  - e. District five: Barnes County;
  - f. District six: Stutsman County;
  - g. District seven: Grand Forks and Traill Counties;

- h. District eight: Griggs, Nelson, and Steele Counties;
- i. District nine: Eddy, Foster, and Wells Counties;
- j. District ten: Cavalier, Pembina, and Walsh Counties;
- k. District eleven: Benson, Bottineau, Burke, Divide, McHenry, Mountrail, Pierce, Ramsey, Renville, Rolette, Towner, Ward, and Williams Counties; and
- l. District twelve: Adams, Billings, Bowman, Burleigh, Dunn, Emmons, Golden Valley, Grant, Hettinger, Kidder, Logan, McIntosh, McKenzie, McLean, Mercer, Morton, Oliver, Sheridan, Sioux, Slope, and Stark Counties.

**SECTION 2. AMENDMENT.** Section 4.1-11-03 of the North Dakota Century Code is amended and reenacted as follows:

**4.1-11-03. North Dakota soybean council - Membership - Terms.**

1. The council consists of one producer elected from each of the ~~eight~~ districts established in section 4.1-11-02.
2. Each member of the council must be a resident of and a producer in the district that the member represents.
3. a. The term of each elected member is three years and begins on April first following the member's election. ~~The~~Except as otherwise provided in this subsection, the terms must be staggered so that no more than three expire each year.
  - b. Notwithstanding subdivision a, the terms of all council members expire on March 31, 2012. Between January 1, 2012, and March 31, 2012, each district established by subsection 2 of section 4.1-11-02 shall elect an individual to serve as a council member with a term beginning April 1, 2012. The initial terms of individuals elected to begin serving as council members on April 1, 2012, are:
    - (1) One year for council members representing districts one, five, seven, and nine;
    - (2) Two years for council members representing districts two, eight, ten, and twelve; and
    - (3) Three years for council members representing districts three, four, six, and eleven.
4. If at any time during a member's term the member ceases to possess any of the qualifications provided for in this section, the member's office is deemed vacant and the council, by majority vote, shall appoint another qualified producer to serve for the remainder of the term.
5. An elected member of the council may not serve more than two consecutive terms.

6. 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 3. 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. ~~a. No later than March first of the year in which the term of a council member is to expire, the extension agent for each county in that member's district shall hold a meeting of soybean producers for the purpose of electing a county representative.~~
  - ~~b. The county extension agent 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.~~
  - ~~c. The meeting must be held within the county.~~
  - ~~d. During the meeting, the county extension agent shall conduct the election.~~
  - ~~e. Any producer who resides in the county may vote in the election.~~
  - ~~f. The county extension agent shall canvass the votes, 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.~~
2. ~~Subsection 1 does 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.~~
  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 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 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 4. AMENDMENT.** Section 4.1-11-05 of the North Dakota Century Code is amended and reenacted as follows:

**4.1-11-05. Election of council member - District representative.**

- 1. Upon receiving ~~the~~ notice that the election has taken place, as required by subdivision ~~fh~~ of subsection 1 of section 4.1-11-04, the director of the North Dakota state university extension service shall call a meeting of all county representatives in the district represented by the member whose term is to expire.
- 2. The director shall notify each county representative in the district of the meeting by registered mail at least five days before the meeting.

3. ~~The meeting~~At the discretion of the director of the North Dakota state university extension service, the meeting may be held by any means, including by conference call or other electronic medium. If the meeting requires physical presence at a particular location, that location must be held within the district.
4. At the meeting, the county representatives shall elect one from among themselves to serve as the council member from that district.
5. The director shall notify ~~the governor and~~ the council that the election has taken place and shall provide to the ~~governor and the~~ council the name and address of the newly elected council member.
6. If the county representatives fail to elect an individual, as required by this section, the director of the North Dakota state university extension service shall notify the council and the council shall appoint a producer from the district to serve as the district's council member. An individual appointed under this subsection has the same rights, duties, and privileges as an elected council member.

Approved April 19, 2011  
Filed April 19, 2011

## CHAPTER 67

### SENATE BILL NO. 2085

(Agriculture Committee)  
(At the request of the Agriculture Commissioner)

AN ACT to create and enact subdivision c to subsection 1 of section 4.1-47-31 of the North Dakota Century Code, relating to the penalty for selling noxious weeds; to amend and reenact section 4.1-47-02 of the North Dakota Century Code, relating to the control and sale of noxious weeds; to provide a penalty; and to allow the agriculture commissioner to use environment and rangeland protection funds for invasive species control.

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

**SECTION 1. AMENDMENT.** Section 4.1-47-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **4.1-47-02. Control of noxious weeds –Responsibility.**

1. Each person shall do all things necessary and proper to control the spread of noxious weeds.
2. No person may distribute, sell, or offer for sale within this state a noxious weed.

**SECTION 2.** Subdivision c to subsection 1 of section 4.1-47-31 of the North Dakota Century Code is created and enacted as follows:

- c. A person who violates subsection 2 of section 4.1-47-02 is subject to a civil penalty not to exceed one hundred dollars for each violation.

**SECTION 3. ENVIRONMENT AND RANGELAND PROTECTION FUND - INVASIVE SPECIES CONTROL.** The agriculture commissioner may use up to \$50,000 of the amount available to the commissioner from legislative appropriation for the biennium beginning July 1, 2011, and ending June 30, 2013, from environment and rangeland protection funds for the purpose of controlling invasive species as provided by section 4.1-47-33.

Approved April 26, 2011  
Filed April 26, 2011

## CHAPTER 68

### HOUSE BILL NO. 1317

(Representatives D. Johnson, Hofstad, Mueller)  
(Senators Flakoll, Klein, Wanzek)

AN ACT to amend and reenact sections 4.1-47-16 and 4.1-47-28 of the North Dakota Century Code, relating to noxious weed control; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 4.1-47-16 of the North Dakota Century Code is amended and reenacted as follows:

#### **4.1-47-16. State appropriations for noxious weed control - Landowner assistance program.**

1. The commissioner shall consult with representatives of county and city weed boards and develop a formula for the distribution to eligible county weed boards and eligible city weed boards of all moneys appropriated by the state for the landowner assistance program.
2.
  - a. The formula must require that county officials budget, from county sources, an amount equal to the revenue that could be raised by a levy of at least three mills for noxious weed control; provided, however, that this amount does not apply to property that lies within the boundaries of a city having a noxious weed control program under this chapter.
  - b. The formula must require that city officials budget, from city sources, an amount equal to the revenue that could be raised by a levy of at least three mills for noxious weed control.
3.
  - a. The formula must require that the landowner contribute an amount equal to at least twenty percent of the cost to be expended on behalf of the landowner.
  - b. ~~The formula may include payment in kind criteria by which nature and type of the landowner's contribution may be realized.~~ must be determined by the weed board having jurisdiction over the area in which the landowner's property is located.

**SECTION 2. AMENDMENT.** Section 4.1-47-28 of the North Dakota Century Code is amended and reenacted as follows:

#### **4.1-47-28. Entry upon land for noxious weed control purposes - Notices - Landowner rights - Remedial requirements - Liens.**

1.
  - a. If a county weed officer determines that any land other than that referenced in subsection 2 contains noxious weeds, the county weed control officer may first contact the occupant and request that the occupant control the noxious weeds within a prescribed time period and in a prescribed manner. If the county weed control officer determines that the



occupant has failed to control the noxious weeds, as requested, the county weed officer shall serve upon the landowner written notice, either personally or by certified mail, requiring the landowner to control the noxious weeds within the time period prescribed by the county weed control officer.

- b. The notice must:
    - (1) Specify the minimal remedial requirements;
    - (2) Specify the time within which the landowner must meet the minimum remedial requirements;
    - (3) Specify that the landowner may be subject to penalties provided under this chapter if the landowner fails to comply with the remedial requirements;
    - (4) Include a statement of costs if the landowner fails to control the noxious weeds and the county weed officer must provide for control of the weeds; and
    - (5) Provide that the landowner may stay any efforts by the county weed officer to control noxious weeds on the land by requesting in writing that the county weed board hold a hearing on the matter.
  - ~~c. The county weed officer shall deliver a copy of the notice personally or forward a copy of the notice by certified mail to any tenant, lessee, or operator of the land on which the noxious weeds are located.~~
  - ~~d.~~ If the landowner does not meet the minimum remedial requirements within the time specified in the notice and does not request a hearing on the matter by the county weed board, the county weed control officer may cause the noxious weeds to be controlled and the expenses charged against the land of the landowner. These expenses are part of the taxes to be levied against the land for the ensuing year and must be collected in the same manner as other real estate taxes.
  - ~~e.d.~~ If after holding a hearing on the matter, the county weed board directs that the noxious weeds be controlled by the county weed officer, the landowner may appeal the decision to the board of county commissioners. A decision by the board of county commissioners is final.
  - ~~f.e.~~ If the landowner does not appeal the decision to the board of county commissioners, or if the board of county commissioners upholds the decision of the county weed board, the county weed control officer may cause the noxious weeds to be controlled and any expenses incurred by the county weed officer in controlling the weeds must be charged against the land of the landowner. These expenses are part of the taxes to be levied against the land for the ensuing year and must be collected in the same manner as other real estate taxes.
2. a. If a city weed control officer determines that land within the officer's jurisdiction contains noxious weeds, the officer may serve upon the landowner written notice either personally or by certified mail, requiring the

- landowner to control the noxious weeds within the time period prescribed by the city weed control officer.
- b. The notice must:
    - (1) Specify the minimal remedial requirements;
    - (2) Specify the time within which the landowner must meet the minimum remedial requirements;
    - (3) Specify that the landowner may be subject to penalties provided under this chapter if the landowner fails to comply with the remedial requirement;
    - (4) Include a statement of costs if the landowner fails to control the noxious weeds and the city weed officer must provide for control of the weeds; and
    - (5) Provide that the landowner may stay any efforts by the city weed officer to control noxious weeds on the land, by requesting in writing that the city weed board hold a hearing on the matter.
  - c. The city weed officer shall deliver a copy of the notice personally or forward a copy of the notice by certified mail to any tenant, lessee, or operator of the land on which the noxious weeds are located.
  - d. If the landowner does not meet the minimum remedial requirements within the time specified in the notice and does not request a hearing on the matter by the city weed board, the city weed control officer may cause the noxious weeds to be controlled and the expenses charged against the land of the landowner. These expenses are part of the taxes to be levied against the land for the ensuing year and must be collected in the same manner as other real estate taxes.
  - e. If after holding a hearing on the matter the city weed board directs that the noxious weeds be controlled by the city weed officer, the landowner may appeal the decision to the governing body of the city. A decision by the governing body is final.
  - f. If the landowner does not appeal the decision to the governing body of the city, or if the governing body of the city upholds the decision of the city weed board, the city weed control officer may cause the noxious weeds to be controlled and any expenses incurred by the city weed officer in controlling the weeds must be charged against the land of the landowner. These expenses are part of the taxes to be levied against the land for the ensuing year and must be collected in the same manner as other real estate taxes.

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

## CHAPTER 69

### HOUSE BILL NO. 1027

(Legislative Management)  
(Agriculture Committee)

AN ACT to create and enact a new section to chapter 4-10, chapters 4.1-53, 4.1-54, and 4.1-57, a new section to chapter 11-08, a new section to chapter 40-05, and a new section to chapter 58-03 of the North Dakota Century Code, relating to the labeling, certification, and sale of seed; to amend and reenact sections 4-10-12.1, 60-02-01, and 60-02.1-01 of the North Dakota Century Code, relating to seed labeler and wholesale potato dealer licenses; to repeal chapters 4-09, 4-09.1, 4-11, 4-25, and 4-42 of the North Dakota Century Code, relating to the labeling, certification, and sale of seed; to provide a penalty; and to provide a continuing appropriation.

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

**SECTION 1. AMENDMENT.** Section 4-10-12.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **4-10-12.1. Liability - Potato crop quantity and quality.**

The state seed commission, state seed department, commissioner and the commissioner's employees, certified seed potato producers, and wholesale potato dealers licensed under chapter ~~4-44.1-57~~ make no expressed or implied warranty of any kind as to the quantity or quality of the crop produced from the seed potatoes or through other produce inspected and certified, including merchantability, fitness for a particular purpose, or absence of disease. The only representation is that the potatoes or other produce were ~~produced, graded, packed, and~~ inspected under the rules of the state seed department or United States department of agriculture. The commissioner and the commissioner's employees function and serve only in an official regulatory manner.

**SECTION 2.** A new section to chapter 4-10 of the North Dakota Century Code is created and enacted as follows:

##### **Plant and seed records - Exempt.**

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

1. Records of any plant or seed inspection, analysis, or testing and germination, purity, variety, or disease determinations conducted by the state seed department on a fee-for-service basis for nonpublic entities or persons.
2. Information received by the seed commission under this chapter from a nonpublic entity or person that the nonpublic entity or person determines is proprietary information or a trade secret.

<sup>15</sup> **SECTION 3.** Chapter 4.1-53 of the North Dakota Century Code is created and enacted as follows:

**4.1-53-01. Definitions.**

In this chapter, unless the context otherwise requires:

1. "Agricultural seed" means:
  - a. The seed of cereal, fiber, forage, grass, or oil crops;
  - b. Irish potato seed tubers;
  - c. Lawn seed;
  - d. Any other seed designated by the seed commissioner as agricultural seed; and
  - e. Any mixture of seeds referenced in this subsection.
2. "Blend" means seed that consists of more than one variety, provided each variety consists of more than five percent of the whole, by weight.
3. "Brand" means a design, name, number, symbol, or word used to identify the seed of one person and distinguish the seed from that of another person.
4. "Certification" means a process that:
  - a. Is designed to maintain the genetic purity and varietal identity of crop cultivars; and
  - b. Requires a variety of components, including:
    - (1) An examination of records provided by the producer;
    - (2) An inspection of the field in which the plants producing seed for certification are growing; and
    - (3) The testing and grading of a representative sample.
5. "Certified" means a designation that the seed department has authorized a labeler to use on seed that met the requirements for certification.
6. "Conditioning" means any process to remove unwanted seeds or other matter from a seed lot in order to produce a uniform product.
7. "Flower seed" means the seed of a herbaceous plant grown for its bloom, ornamental foliage, or other ornamental part.

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<sup>15</sup> Section 4.1-53-10 was amended by section 11 of House Bill No. 1399, chapter 70; section 4.1-53-35 was amended by section 12 of House Bill No. 1399, chapter 70; section 4.1-53-56 was repealed by section 23 of House Bill No. 1399, chapter 70.

8. "Germination" means the physiological process of development and the emergence from the seed embryo of essential structures that are indicative of the ability to produce a normal plant under favorable conditions.
9. "Hard seed" means a seed that has an impermeable seed coat and has not absorbed water by the end of the prescribed test period.
10. "Inert matter" means anything other than unbroken seeds.
11. "Kind" means one or more related species or subspecies known singly or collectively by a common name.
12. "Label" means a device or tag attached to a seed container, printed or stamped information on a seed container, or written information accompanying a lot of bulk seed.
13. "Labeler" means the person identified by name and address on the label.
14. "Lot" means an identifiable quantity of seed that is uniform within permitted tolerances for the factors that appear on its label.
15. "Mixture" means seed consisting of more than one kind, each in excess of five percent of the whole, by weight.
16. "Official seed-certifying agency" means:
  - a. An agency that is authorized under the laws of a state, territory, or possession to officially certify seed and which has standards and procedures approved by the United States secretary of agriculture to assure the genetic purity and identity of any seed it certifies; or
  - b. An agency of a foreign country if the United States secretary of agriculture has determined that the agency adheres to seed certification procedures and standards that are comparable to those generally adhered to by a seed-certifying agency meeting the criteria set forth in subdivision a.
17. "Prohibited weed seed" means:
  - a. The seed or propagule of any weed designated as noxious by the agriculture commissioner in accordance with section 4.1-47-05; or
  - b. The seed or propagule of any weed determined by the seed commissioner to be highly destructive and difficult to control by good cultural practices or by the use of herbicides.
18. "Pure seed" means a quantity of seed that belongs to a particular kind or variety and which does not contain either inert matter or seeds of another kind or variety.
19. "Record" includes all information relating to origin or source, variety, lot identification, quantity, inspection, processing, testing, labeling, distribution, and file samples of the seed.
20. "Restricted weed seed" means a seed that is determined by the seed commissioner to be:

- a. Objectionable in agricultural seed, lawn or turf seed, vegetable seed, and flower seed; and
  - b. Controllable by good cultural practices or the use of herbicides.
21. "Selection" means a subgroup of a variety and includes clones, lines, and strains.
22. "Treated" means a seed has received an application of a substance intended to enhance the performance of the seed or alter a physiological process of the plant.
23. "Unbroken seed" means a seed that is more than fifty percent intact.
24. "Variety" means a subdivision of a kind that:
- a. Can be differentiated by one or more identifiable morphological, physiological, or other characteristics from other varieties of the same kind;
  - b. Has describable variations in essential and distinct characteristics; and
  - c. Will remain unchanged in its essential and distinct characteristics and uniformity when reproduced or reconstituted, as required by the different categories of varieties.

#### **4.1-53-02. Seed department - Location.**

The North Dakota seed department is the official seed-certifying agency of the state. The seed department must be located on the campus of North Dakota state university of agriculture and applied science.

#### **4.1-53-03. Official seal.**

The seed department shall have and use an official departmental seal that has been recorded in the office of the secretary of state.

#### **4.1-53-04. Seed commission - Membership.**

The seed commission is the governing board of the seed department. The seed commission consists of the following nine members:

1. An individual appointed by the North Dakota crop improvement association;
2. An individual appointed by the North Dakota certified seed potato growers association;
3. An individual appointed by the North Dakota dry edible bean seed growers association;
4. An individual appointed by the North Dakota agricultural association;
5. An individual appointed by the North Dakota potato council;
6. A resident of this state appointed by the northern plains potato growers association;

7. An individual who operates a seed-conditioning plant approved by the seed department, appointed by the North Dakota grain dealers association;
8. The director of the agricultural experiment station or the director's designee; and
9. The agriculture commissioner or the agriculture commissioner's designee.

#### **4.1-53-05. Seed commission - Chairman - Meetings.**

1. The agriculture commissioner shall serve as the chairman of the seed commission.
2. The chairman shall call all regular meetings of the seed commission and shall call a special meeting within seven days if petitioned to do so by two members of the seed commission.
3. The seed commission shall hold at least two regular meetings each year.

#### **4.1-53-06. Seed commission - Appointment of proxy.**

If a member of the seed commission is unable to attend a meeting of the commission, the member may appoint a proxy. The appointment must be in writing and must be presented to the chairman. The vote of the proxy is final.

#### **4.1-53-07. Seed commission - Members - Compensation.**

Each member of the seed commission, except the agriculture commissioner and the director of the agricultural experiment station, is entitled to receive compensation at the rate of one hundred thirty-five dollars per day and reimbursement for expenses, as provided by law for state officers, if the member is attending a commission meeting or performing duties directed by the commission.

#### **4.1-53-08. Seed commission - Powers.**

The seed commission may:

1. Establish branch offices and laboratories at locations in this state, other than the campus of North Dakota state university of agriculture and applied science, if the seed commissioner determines that they are necessary to carry out the duties of the seed commission, the seed commissioner, or the seed department;
2. Dismiss the seed commissioner for cause; and
3. Appoint an acting seed commissioner if the position becomes vacant.

#### **4.1-53-09. Seed commission - Duties.**

The seed commission shall:

1. Appoint a seed commissioner;
2. Compensate the seed commissioner; and
3. Review the appointment of a seed commissioner, annually.

**4.1-53-10. Seed commissioner - Powers.**

The seed commissioner may:

1. Contract with North Dakota state university of agriculture and applied science for the use of facilities and equipment;
2. Contract with any person for any lawful purpose;
3. Enter upon real property and access any structure and personal property, at any time, to:
  - a. Inspect, sample, and test seed for compliance with this chapter; and
  - b. Inspect records for compliance with this chapter; and
4. Collect royalty, research, and patent fees.

**4.1-53-11. Seed commissioner - Duties.**

The seed commissioner shall:

1. Manage the seed department;
2. Provide, equip, and maintain offices, laboratories, and any other facilities necessary to carry out this chapter, subject to the approval of the seed commission;
3. Employ and compensate necessary personnel;
4. Permit North Dakota state university of agriculture and applied science to use the seed department facilities and the services of the seed department laboratories at convenient times;
5. Determine the nature and size of any seed and plant samples required by the seed department in order to conduct official tests or make official determinations and shall prescribe the manner in which the seed and plant samples are to be obtained and delivered to the seed department;
6. Provide commodity inspection services upon request;
7. Establish and charge fees for services, subject to the approval of the seed commission;
8. Provide periodic reports to the seed commission regarding the management and operation of the seed department;
9. Recommend to the seed commission the biennial budget and annual salary schedules for the seed department;
10. Submit the seed department's biennial budget, as approved by the seed commission, to the office of management and budget;
11. Do all things necessary to enforce this chapter and rules implementing this chapter; and



12. Perform any other duties as directed by the seed commission.

**4.1-53-12. Agricultural seed - Label requirements.**

1. Agricultural seed offered for sale or sold in this state, for planting purposes, must be labeled.
2.
  - a. If the agricultural seed is offered for sale or sold in a container, the label must be plainly printed in English and conspicuously placed on or attached to the container.
  - b. If the agricultural seed is offered for sale or sold in bulk, the label must be plainly printed in English and provided to the purchaser at or before the time of delivery.

**4.1-53-13. Agricultural seed - Label - Content.**

A label required by section 4.1-53-12 must include:

1. The lot number or other lot identification:
2.
  - a. The state or foreign country in which the seed was grown; or
  - b. A statement indicating that the origin of the seed is unknown;
3. The percentage by weight of all weed seed;
4. The name of each restricted weed seed present and its rate of occurrence per pound [453.59 grams], if:
  - a. In seeds of grasses and small seeded legumes, the rate of occurrence exceeds thirteen seeds per pound [453.59 grams]; or
  - b. In any other agricultural seeds, the rate of occurrence exceeds five seeds per pound [453.59 grams];
5. The percentage by weight of any other agricultural seeds present;
6. The percentage by weight of inert matter;
7.
  - a. The percentage of germination, exclusive of hard seed;
  - b. The percentage of hard seed, if applicable; and
  - c. The month and year in which the percentages were determined; and
8. The full name and address of the labeler.

**4.1-53-14. Agricultural seed - Label requirements - Treated seed.**

1. In addition to any other requirements set forth in this chapter, if the seed has been treated, the label must indicate that the treatment has occurred and must include the commonly accepted, coined, chemical, or abbreviated chemical name of the substance used in the treatment.

- a. If the substance with which the seed was treated is harmful to humans or to other vertebrate animals, the label must contain a cautionary statement prohibiting use of the seed for human or animal consumption.
  - b. If the substance with which the seed was treated is a mercurial or a similarly toxic substance, the label must contain a statement and symbol indicating that the substance is poison.
  - c. If the substance with which the seed was treated is an inoculant, the label must contain the date beyond which the inoculant is claimed not to be effective for use on that particular seed.
2. The information required by this section may be placed on a separate label.

**4.1-53-15. Agricultural seed - Label requirement - Hermetically sealed containers.**

In addition to any other label requirements set forth in this chapter, if agricultural seed that is offered for sale or sold is in a container that has been hermetically sealed, the label must so indicate.

**4.1-53-16. Agricultural seed - Additional label requirements - Limited applicability.**

1. In addition to any other label requirements set forth in this chapter, the label on each container of barley, canola, dry beans, durum, field peas, flax, oats, rye, soybeans, and wheat seed offered for sale or sold in this state for planting purposes must include:
  - a. The kind of each agricultural seed;
  - b. The variety of each agricultural seed component constituting more than five percent of the whole; and
  - c. The percentage by weight of each agricultural seed component constituting more than five percent of the whole.
2. In addition to any other requirements set forth in this chapter, the label on each container of agricultural seed other than barley, canola, dry beans, durum, field peas, flax, oats, rye, soybeans, and wheat seed offered for sale in this state for planting purposes:
  - a. Must include the kind of each agricultural seed;
  - b. May include the variety of each agricultural seed component constituting more than five percent of the whole; and
  - c. Must include the percentage by weight of each agricultural seed component constituting more than five percent of the whole.

**4.1-53-17. Agricultural seed - Selling by brand - Label requirement.**

The seed of barley, canola, dry beans, durum, field peas, flax, oats, rye, soybeans, and wheat may be sold by brand, provided the true variety name or number is clearly stated on the label.

#### **4.1-53-18. Canola seed - Additional label requirements.**

In addition to any other requirements set forth in this chapter, if the agricultural seed is canola, the seed must:

1. Have been certified by the seed commissioner as meeting the standards of this state; or
2. Have been certified by the appropriate agency of another state or country having canola certification standards that are determined by the seed commissioner to meet or exceed the standards of this state.

#### **4.1-53-19. Agricultural seed components - Label requirements - Mixture or blend - Designation.**

If more than ten percent of the whole consists of an aggregate of agricultural seed components, each present in an amount not exceeding five percent of the whole, the label must include each component in excess of one percent of the whole named together with the percentage by weight of each. Each component must be listed in the order of its predominance. If more than one component is named, the word "mixture" or "blend" must be stated appropriately with the name of the mixture or blend.

#### **4.1-53-20. Agricultural seed - Sale of small quantities - Container label requirements.**

If agricultural seed is sold in quantities of five pounds [2.26796 kilograms] or less, the container into which the seed is placed is exempt from the labeling requirements of this chapter provided:

1. The container from which the seed is taken is in compliance with the labeling requirements of this chapter; and
2. The seed is removed from the container referenced in subsection 1 and weighed, in the presence of the purchaser.

#### **4.1-53-21. Vegetable seed - Label requirements.**

1. Each container of vegetable seed offered for sale or sold in this state, for planting purposes, must be labeled.
2. The label must be plainly printed in English and placed conspicuously on or attached to the container.

#### **4.1-53-22. Vegetable seed - Label - Content.**

The label for vegetable seed packed in units of one pound or less and the label for vegetable seed on prepared mats, tapes, or in preplanted containers must include:

1. The kind and variety of seed;
2. The lot number or other lot identification;
3. The full name and address of the labeler;
4. The month and year in which the germination test was completed; and

5.
  - a. The percentage of germination; or
  - b. The date by which the seed must be sold, as established in section 4.1-53-52.

#### **4.1-53-23. Vegetable seed - Additional label requirements.**

If the germination test referenced in section 4.1-53-22 results in a finding that the seed does not meet the standards for germination, as established by the commissioner, the label must include:

1. The percentage of germination, exclusive of hard seed;
2. The percentage of hard seed, if present; and
3. The words "below standard" in at least eight-point type.

#### **4.1-53-24. Vegetable seed - Larger units - Label requirements - Exception.**

1. The label for any vegetable seed other than that referenced in section 4.1-53-22 must include:
  - a. The lot number or other lot identification;
  - b.
    - (1) The kind and variety of vegetable seed present in excess of five percent by weight;
    - (2) The percentage by weight of each seed referenced in paragraph 1, in order of its predominance;
    - (3) The percentage of germination for each seed referenced in paragraph 1, exclusive of hard seed;
    - (4) The percentage of hard seed, if present; and
    - (5) The month and year that the percentages were determined; and
  - c. The full name and address of that labeler.
2. If vegetable seed is sold in quantities of five pounds [2.26796 kilograms] or less, the container into which the seed is placed is exempt from the labeling requirements of this chapter provided:
  - a. The container from which the seed is taken is in compliance with the labeling requirements of this chapter; and
  - b. The seed is removed from the container referenced in subsection 1 and weighed, in the presence of the purchaser.

#### **4.1-53-25. Vegetable seed - Quantity - Label requirement.**

If the vegetable seeds are on a mat, on tape, or in some other germination medium, and the quantity of seed cannot be readily determined, the label must include the minimum number of seeds per definable unit.

**4.1-53-26. Vegetable seed - Label requirements - Treated seed.**

1. In addition to any other requirements set forth in this chapter, if the vegetable seed has been treated, the label must indicate that the treatment has occurred and must include the commonly accepted, coined, chemical, or abbreviated chemical name of any substance used in the treatment.
2. If the substance with which the seed was treated is harmful to humans or to other vertebrate animals, the label must contain a cautionary statement prohibiting use of the seed for human or animal consumption.
3. If the substance with which the seed was treated is a mercurial or a similarly toxic substance, the label must contain a statement and symbol indicating that the substance is poison.
4. If the substance with which the seed was treated is an inoculant, the label must contain the date beyond which the inoculant is claimed not to be effective on that particular seed.
5. The information required by this section may be placed on a separate label.

**4.1-53-27. Vegetable seed - Label requirement - Hermetically sealed containers.**

In addition to any other label requirements set forth in this chapter, if vegetable seed that is offered for sale or sold is in a container that has been hermetically sealed, the label must so indicate.

**4.1-53-28. Flower seed - Label requirements.**

1. Each container of flower seed offered for sale or sold in this state, for planting purposes, must be labeled.
2. The label must be plainly printed in English and conspicuously placed on or attached to the container.

**4.1-53-29. Flower seed - Label - Content.**

1. The label for flower seed must include:
  - a. (1) The kind and variety; or  
(2) The information required by rule with respect to type and performance characteristics;
  - b. (1) The month and year in which the seed was tested; or  
(2) The year for which the seed was packaged; and
  - c. The full name and address of the labeler.
2. If the flower seed is packed in units of more than one pound [453.59 grams], the label must also include the lot number or other lot identification, unless the flower seed is on prepared mats, on tapes, or in preplanted containers.

3. If the flower seed is of a kind for which standard testing procedures are prescribed by the association of official seed analysts, the label must also include:
  - a. The percentage of germination exclusive of hard seed; and
  - b. The percentage of hard seed, if present.
4. If the flower seed is of a kind for which standard testing procedures are prescribed by the association of official seed analysts and if the seed does not meet the standard for germination required by rule, the label must also include the percentage of germination exclusive of hard seeds and the words "below standard" in at least eight-point type.

#### **4.1-53-30. Flower seed - Quantity - Label requirement.**

If the flower seeds are on a mat, on tape, or in some other germination medium and the quantity of seed cannot be readily determined, the label must include the minimum number of seeds per definable unit.

#### **4.1-53-31. Flower seed - Label requirements - Treated seed.**

1. In addition to any other requirements set forth in this chapter, if the flower seed has been treated, the label must indicate that the treatment has occurred and must include the commonly accepted, coined, chemical, or abbreviated chemical name of the substance used in the treatment.
  - a. If the substance with which the flower seed was treated is harmful to humans or to other vertebrate animals, the label must contain a cautionary statement prohibiting use of the seed for human or animal consumption.
  - b. If the substance with which the seed was treated is a mercurial or a similarly toxic substance, the label must contain a statement and symbol indicating that the substance is poison.
  - c. If the substance with which the seed was treated is an inoculant, the label must contain the date beyond which the inoculant is claimed not to be effective on that particular seed.
2. The information required by this section may be placed on a separate label.

#### **4.1-53-32. Tree seed and shrub seed - Label requirements.**

1. a. Each container of tree seed or shrub seed offered for sale or sold in this state, for planting purposes, must be labeled.
  - b. The label must be plainly printed in English and conspicuously placed on or attached to the container.
2. If seed is supplied in fulfillment of a contract for the collection and gathering of the seed, the label requirements of this section may be met by an analysis tag attached to the invoice if each container is clearly identified by a lot number stenciled on the container or if the seed is in bulk.
3. If the seed is offered for sale or sold in bulk, the label must be provided to the purchaser at or before the time of delivery.

**4.1-53-33. Tree seed and shrub seed - Label - Content.**

A label required by this section must include:

1. The common name of the tree or shrub species and, if appropriate, the name of the subspecies;
2. The scientific name of the genus, the species, and, if appropriate, the name of the subspecies;
3. The lot number or other lot identification;
4. The elevation at which or the upper and lower elevations within which the seed was collected;
5. The percentage of pure seed by weight; and
6. The full name and address of the labeler.

**4.1-53-34. Tree seed and shrub seed - Label - Statement of origin.**

In addition to any other label requirements set forth in section 4.1-53-33, the label of tree seed or shrub seed must identify the location from which the seeds were collected by:

1. Latitude and longitude; or
2. County or township.

**4.1-53-35. Tree seed and shrub seed - Label requirements - Percentage of germination.**

1. If the tree seed or shrub seed belongs to a species for which standard germination testing procedures are prescribed by the association of official seed analysts, the label must include:
  - a. (1) The percentage of germination, exclusive of hard seed;
  - (2) The percentage of hard seed; and
  - (3) The month and year in which the percentage of germination was determined; or
- b. A statement indicating that the test to determine the percentage of germination is not yet completed and that the results will be supplied upon request.
2. If the tree or shrub seed belongs to a species for which standard germination testing procedures are prescribed, the label must include the year in which the seed was collected.

**4.1-53-36. Tree seed and shrub seed - Label requirements - Treated seed.**

1. In addition to any other requirements set forth in this chapter, if the tree seed or shrub seed has been treated, the label must indicate that the treatment has

occurred and must include the commonly accepted, coined, chemical, or abbreviated chemical name of any substance used in the treatment.

2. If the substance with which the seed was treated is harmful to humans or to other vertebrate animals, the label must contain a cautionary statement prohibiting use of the seed for human or animal consumption.
3. If the substance with which the seed was treated is a mercurial or a similarly toxic substance, the label must contain a statement and symbol indicating that the substance is poison.
4. If the substance with which the seed was treated is an inoculant, the label must contain the date beyond which the inoculant is claimed not to be effective for use on that particular seed.

#### **4.1-53-37. Tolerances.**

1. In order to determine correctness and accuracy in labeling seed as required by this chapter, the seed commissioner shall:
  - a. Apply the tolerances established by the Federal Seed Act of August 9, 1939 [53 Stat. 1275; 7 U.S.C. 1551 et seq.], as amended through June 30, 2011; or
  - b. Establish stricter tolerances by rule.
2. Notwithstanding subsection 1, the tolerance for yellow starthistle is zero.

#### **4.1-53-38. Seed labeling permit - Reports - Fees - Civil penalty.**

1. Before a person in this state may label agricultural, vegetable, flower, or tree or shrub seed and before a person may label agricultural, vegetable, flower, or tree or shrub seed for delivery into this state, the person shall obtain a seed labeling permit from the seed commissioner.
2. Each person issued a seed labeling permit under this section shall:
  - a. Record all seeds sold by that person in this state;
  - b. Report all seeds sold by that person in this state to the seed commissioner at the time and in the manner determined by the seed commissioner; and
  - c. Submit at the time and in the manner determined by the seed commissioner, fees in the amount set by the seed commissioner and applicable to all seeds that the person sells in this state.
3. If a person issued a seed labeling permit under this section fails to submit the reports or fees required by this section within thirty days of the date determined by the seed commissioner, the seed commissioner may assess a penalty equal to five percent of the amount due or ten dollars, whichever is greater.

#### **4.1-53-39. Invoice and records.**

A labeler shall:



1. Retain a record of each lot of seed handled for three years after final disposition of the lot;
2. Retain a file sample of each lot of seed handled for one year after final disposition of the lot; and
3. Make the records and file samples required by this section available to the seed commissioner upon request.

#### **4.1-53-40. Shipments from out of state - Label requirements.**

The purchaser, vendor, or any other person receiving seed shipped into this state must have the seed labeled:

1. In accordance with this chapter; or
2. If permitted by the seed commissioner, in accordance with requirements applicable in other jurisdictions.

#### **4.1-53-41. Nonresident seed dealer's license.**

1. A person that is not a resident of this state may not offer for sale or sell any agricultural, vegetable, flower, or tree or shrub seed in this state directly to a consumer unless the person first obtains a nonresident seed dealer's license. In order to obtain the license, a person must submit to the seed commissioner an application for a license, together with the required fee.
2. A license issued under this section covers all employees and agents of the applicant, provided their names are included with the application.
3. A license issued under this section expires on December thirty-first.

#### **4.1-53-42. Certified seed - Establishment of certification system.**

1. The seed commissioner shall establish a seed certification system for this state.
2. The seed certification system must include standards of quality for any lot or stock of seed that may be or may become eligible for field inspection or for final certification.
3. The seed commissioner shall make the requirements for seed certification readily available in electronic and printed formats.

#### **4.1-53-43. Requests for certification - Required submissions.**

1. Any person may submit kinds, varieties, selections, and names of seed stock and request that the seed commissioner consider the submission for certification.
2. In order to pursue certification, a person shall provide to the seed commissioner:
  - a. The name of the variety;

- b. A statement regarding the variety's origin and the breeding procedure used in its development;
- c. A description of the morphological, physiological, or other characteristics that distinguish the variety from other varieties;
- d. Evidence supporting the identity of the variety;
- e. A statement regarding the geographic area of adaptation;
- f. A statement regarding plans and procedures for the maintenance of seed classes, including the number of generations through which the variety may be multiplied;
- g. A description of the manner in which the variety is constituted when a particular cycle of reproduction or multiplication is specified;
- h. Any additional restrictions on the variety specified by the breeder; and
- i. A sample of seed that is representative of the variety as marketed.

#### **4.1-53-44. Certified seed - Specific label requirements.**

The seed commissioner shall prescribe the labels, seals, certificates, and statements that must be used for, or in relation to, any seed, or the various kinds and qualities grown, handled, stored, offered for sale, or sold in this state as "breeders", "foundation", "registered", or "certified" seed, and shall specify the words and information required to be on the labels, seals, certificates, and seed containers.

#### **4.1-53-45. Certified seed - Use of certain terms - Required authorization.**

A person may not use the terms "breeders", "foundation", "registered", or "certified", and may not use substantially equivalent terms, in the labeling or in the advertising, characterization, or representation of seed that is offered for sale or sold in this state, unless authorized to do so by the seed commissioner. The prohibition of this section applies to oral and written forms of advertising, characterizations, and representations.

#### **4.1-53-46. Seed conditioning facilities - Other facilities - Standards.**

The seed commissioner may establish standards for:

1. Seed conditioning facilities and any other facilities that handle seed eligible for certification; and
2. Facilities that handle and market "breeders", "foundation", "registered", or "certified" seed.

#### **4.1-53-47. Seed for certification purposes - Increase in foundation seed stocks.**

The seed commissioner may participate with any public or private entity in the selection, testing, and production of seed for certification purposes and in efforts to increase foundation seed stocks suitable for the production of certified seed.

**4.1-53-48. Plant Variety Protection Act - Requirements for certification.**

1. If a certificate of plant variety protection issued under the Plant Variety Protection Act [7 U.S.C. 2121 et seq.], as amended through July 31, 2011, specifies that the variety may be sold only as a class of certified seed, that seed must be certified by an official seed-certifying agency before it can be advertised for sale, offered for sale, or sold.
2. Seed from a certified lot may be used in a blend or mixture by or with the approval of the owner of the variety.

**4.1-53-49. Identity-preserved seed and crops - Determination of genetic traits.**

1. The seed commissioner may inspect and analyze seed or crops grown, sold, or otherwise present in this state to determine and verify the genetic traits of the seed or the crops.
2. For purposes of conducting the inspection, analysis, or verification, the seed commissioner may:
  - a. Accept samples of seed or crops grown in this state, sold in this state, or otherwise present in this state from any person that owns the seed or crops; and
  - b. Upon request of the owner, obtain samples of the seed or crops.

**4.1-53-50. Identity-preserved seed and crops - Verification and certification services.**

The seed commissioner may establish programs and procedures to provide producers with customized verification and certification services pertaining to identity-preserved seed and crops.

**4.1-53-51. Sale of seed - Prohibitions.**

A person may not offer for sale or sell any seed that:

1. Is not labeled in accordance with the requirements of this chapter;
2. Is labeled with information the person knows is false or misleading;
3. Is designated, represented, or advertised as having a variety name other than that by which the seed was originally known;
4. Contains restricted weed seeds in excess of twenty-five seeds per pound [453.59 grams];
5. Exceeds the stated tolerances for noxious weed seeds; or
6. Contains weed seeds in excess of one percent by weight.

**4.1-53-52. Germination test - Requirement for sale.**

1. a. Except as provided in subsection 4, a person may not offer for sale or sell any agricultural seed unless:

- (1) The seed has been tested to determine the percentage of germination; and
    - (2) The period of time between the first day of the month following that in which the germination test was completed and the date on which the seed is offered for sale or sold does not exceed nine months.
  - b. Subdivision a is not applicable to lawn and turf grasses.
2. a. Except as provided in subsection 4, a person may not offer for sale or sell any flower, vegetable, grass, or forb seed unless:
  - (1) The seed has been tested to determine the percentage of germination; and
  - (2) The period of time between the first day of the month following that in which the germination test was completed and the date on which the seed is offered for sale or sold does not exceed twelve months.
- b. Subdivision a is not applicable to lawn and turf grasses.
3. Except as provided in subsection 4, a person may not offer for sale or sell any lawn and turf grass seed, or any blends or mixtures of lawn and turf grass seed, unless:
  - a. The seed has been tested to determine the percentage of germination; and
  - b. The period of time between the first day of the month following that in which the germination test was completed and the date on which the seed is offered for sale or sold does not exceed fifteen months.
4. A person may not offer for sale or sell any agricultural, flower, vegetable, or tree or shrub seed in hermetically sealed packages unless:
  - a. The seed has been tested to determine the percentage of germination; and
  - b. The period of time between the first day of the month following that in which the germination test was completed and the date on which the seed is offered for sale or sold does not exceed thirty-six months.

#### **4.1-53-53. Prohibited activities.**

A person may not:

1. Detach, alter, deface, or destroy any label provided for in this chapter;
2. Alter or substitute seed with the intent to defeat the purpose of this chapter;
3. Engage in false or misleading advertising regarding seeds;
4. Use the name of the seed department or the name of the official laboratory for advertising purposes in connection with seed analyzed or tested by the seed department or the official laboratory, except in the case of certified seed;

5. Fail to comply with a stop-sale order issued by the seed commissioner:
6. Use the words "type" or "trace" on a label in connection with the name and description of any seed:
7. Disclaim in any manner or form a vendor's responsibility for any label content required by law; or
8. Sell or transfer a protected variety to another producer for the purpose of planting without obtaining the approval of the variety owner or developer.

#### **4.1-53-54. Stop-sale order - Issuance - Enforcement - Appeal.**

1. The seed commissioner may issue a written stop-sale order to the owner or custodian of any lot of seed that the seed commissioner finds to be in violation of this chapter.
2. The seed commissioner may attach terms and conditions that must be fulfilled before the order will be lifted.
3. The stop-sale order shall remain in effect until the seed commissioner is satisfied that the violation no longer exists. Upon making that determination, the seed commissioner shall lift the stop-sale order.
4. The seed commissioner shall do all things necessary and proper to enforce a stop-sale order issued under this section.
5. Any person subject to a stop-sale order under this section may appeal the order to a court of competent jurisdiction.

#### **4.1-53-55. Seizure and injunction - Action.**

1. If the seed commissioner determines that any lot of seed is not in compliance with this chapter, the seed commissioner may petition a court of competent jurisdiction for seizure of the seed. If the court orders the condemnation of the seed, it must be denatured, processed, destroyed, relabeled, or otherwise disposed of in accordance with the laws of this state.
2. A court may not order disposition of the seed without first having given the owner an opportunity to apply to the court for release of the seed, or for permission to process or relabel the seed in compliance with this chapter.
3. Any violation of this chapter may be enjoined in a court of competent jurisdiction without bringing any other civil or criminal action.

#### **4.1-53-56. Prosecution for violations - Duty of attorney general and state's attorney.**

Upon a complaint by the seed commissioner alleging a violation of this chapter or of any rule implementing this chapter, the attorney general or the state's attorney of the county in which the case arises shall initiate legal proceedings.

#### **4.1-53-57. Penalty - Criminal - Civil - Exemption.**

1. Any person willfully violating this chapter or the rules implementing this chapter is guilty of a class A misdemeanor.

2. When construing and enforcing this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person must be deemed to be the act, omission, or failure of such person as well as that of the person employed.
3. Any person found guilty of violating this chapter or the rules implementing this chapter is subject to a civil penalty in an amount not to exceed five thousand dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding or by the seed commissioner.
4. A person is not subject to the penalties of this chapter for having offered for sale or sold any seed that was incorrectly represented as to kind, variety, or origin and which could not be identified through examination, unless the person failed to:
  - a. Obtain an invoice or grower's declaration stating the required information;  
or
  - b. Take other actions necessary to ensure that the seed was properly identified.

#### **4.1-53-58. Certificates and reports - Publication.**

If the seed commissioner signs a document relating to the findings and determinations made in a laboratory by seed department personnel, a court shall accept the document as prima facie evidence of the statements contained in the document. The seed commissioner is subject to court order for a review of the findings and determinations set forth in the document.

#### **4.1-53-59. Liability of seed commission, seed department, seed commissioner, and certified or noncertified agricultural seed producers.**

A warranty of any kind, either expressed or implied, including a warranty of merchantability, fitness for a particular purpose, or absence of disease, is not made by the seed commission, the seed department, the seed commissioner, or certified or noncertified seed producers as to the quantity or quality of the crop produced from the seeds or as to other produce, which is inspected and certified, except as provided in this section. The sole warranty made is that the seeds were inspected under the rules of the seed department or the United States department of agriculture. The seed commissioner functions and serves only in an official regulatory manner.

#### **4.1-53-60. Seed department records - Exemption.**

The following records of the seed department are exempt from section 44-04-18:

1. Records of any plant or seed analysis, testing, and variety or disease determination conducted by the seed department on a fee-for-service basis for private persons; and
2. Information that is received by the seed department under this chapter from a private person and which the private person determines is proprietary information or a trade secret.

#### **4.1-53-61. Applicability of chapter.**

This chapter does not apply to:

1. Seed that is not intended for planting purposes; and
2. Seed grown by a producer and sold by that producer without advertising and without using a third party as an agent or broker to effect the sale, provided this exemption is not applicable if the seed is a variety protected by the Plant Variety Protection Act [7 U.S.C. 2321 et seq.], as amended through July 31, 2011.

#### **4.1-53-62. Seed department fund - Continuing appropriation.**

1. The seed commissioner shall forward all moneys received under this chapter to the state treasurer for deposit in a special fund known as the seed department fund. All moneys in the seed department fund are appropriated on a continuing basis to the seed department to carry out this chapter.
2. The seed commissioner shall approve all expenditures made pursuant to this chapter and shall document the expenditures at the time and in the manner required by the office of management and budget.
3. The seed commissioner shall provide a report to the house and senate appropriations committees, at the time and in the manner directed by the chairmen of the committees. The report must contain a summary of the department's activities during the current biennium and a statement of revenues and expenditures for the ensuing biennium.
4. At the direction of the seed commission, the state treasurer shall invest all available moneys in the seed department fund. The state treasurer shall credit twenty percent of the investment income to the general fund and the remaining eighty percent of the investment income to the seed department fund.

**SECTION 4.** Chapter 4.1-54 of the North Dakota Century Code is created and enacted as follows:

#### **4.1-54-01. Seed arbitration board - Membership.**

The seed arbitration board consists of the following members:

1. The agriculture commissioner;
2. The seed commissioner;
3. The director of the North Dakota state university extension service;
4. The director of the North Dakota agricultural experiment station;
5. The chairman of the seed trade division of the North Dakota agriculture association; and
6. A producer appointed by the agriculture commissioner.

#### **4.1-54-02. Seed arbitration board - Compensation.**

The chairman of the seed division of the North Dakota agriculture association and the producer are entitled to receive compensation in the amount of one hundred thirty-five dollars per day plus reimbursement for expenses as provided by law for

state officials, if the individual is attending meetings or performing duties directed by the board. The compensation and reimbursement for expenses required by this section must be paid by the agriculture commissioner.

#### **4.1-54-03. Seed arbitration board - Rules of operation and procedure.**

The seed arbitration board shall adopt rules of operation and procedure for arbitration hearings, including a formula for reimbursement by the parties of the expenses of the arbitration process.

#### **4.1-54-04. Seed arbitration board - Petition - Hearing - Recommendation.**

1. A seed labeler, seed dealer, or seed customer may file with the agriculture commissioner a petition for a hearing to settle a dispute involving a seed transaction.
2. The agriculture commissioner shall forward the petition to the seed arbitration board.
3. The seed arbitration board shall hold a hearing and within thirty days issue a nonbinding recommendation for a resolution of the dispute.

#### **4.1-54-05. Seed arbitration board - Hearing - Use of evidence.**

Any evidence and testimony presented at a seed arbitration hearing and any findings or recommendations by the seed arbitration board are admissible in any subsequent proceeding.

<sup>16</sup> **SECTION 5.** Chapter 4.1-57 of the North Dakota Century Code is created and enacted as follows:

#### **4.1-57-01. Definitions.**

In this chapter, unless the context otherwise requires:

1. "Insolvency" means an inability to provide payment for potatoes purchased by the dealer.
2. "Potato" means an Irish potato.
3. "Wholesale potato dealer" means any person who:

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<sup>16</sup> Section 4.1-57-01 was amended by section 13 of House Bill No. 1399, chapter 70; section 4.1-57-03 was amended by section 14 of House Bill No. 1399, chapter 70; section 4.1-57-04 was amended by section 15 of House Bill No. 1399, chapter 70; section 4.1-57-05 was amended by section 16 of House Bill No. 1399, chapter 70; section 4.1-57-12 was amended by section 17 of House Bill No. 1399, chapter 70; section 4.1-57-15 was amended by section 18 of House Bill No. 1399, chapter 70; section 4.1-57-17 was repealed by section 23 of House Bill No. 1399, chapter 70; section 4.1-57-18 was repealed by section 23 of House Bill No. 1399, chapter 70; section 4.1-57-19 was amended by section 19 of House Bill No. 1399, chapter 70; section 4.1-57-21 was amended by section 20 of House Bill No. 1399, chapter 70; section 4.1-57-22 was amended by section 21 of House Bill No. 1399, chapter 70.



- a. Buys potatoes in wholesale lots directly from a producer or a producer cooperative;
- b. Sells or handles potatoes in wholesale lots for the purpose of processing or resale; or
- c. Handles potatoes on account of or as an agent for another.

#### **4.1-57-02. Wholesale potato dealer - License required.**

Before a person may engage in the business of a wholesale potato dealer, the person must be licensed by the seed commissioner.

#### **4.1-57-03. Application for license - Content.**

To obtain a license as a wholesale potato dealer, a person must complete an application and submit it to the seed commissioner. The application must be signed by the applicant under oath and must include:

1. The location in which the applicant intends to operate as a wholesale potato dealer;
2. The estimated amount of business to be done monthly;
3. The amount of business done the preceding year, if any;
4. The greatest volume of potatoes, by hundredweight, purchased during any one month in the preceding calendar year;
5. The greatest value of potatoes purchased during any one month in the preceding calendar year;
6. The name of each partner if the applicant is a partnership;
7. The name of each corporate officer and the state of incorporation if the applicant is a corporation;
8. The name of each manager and the state of organization if the applicant is a limited liability company;
9. The name of every agent employed by the applicant on the date of the application;
10. A financial statement prepared in accordance with generally accepted accounting principles showing the assets and liabilities of the applicant;
11. A list of similar licenses issued to the applicant by other states; and
12. The name of each state that has:
  - a. Refused to issue the applicant a wholesale potato dealer's license;
  - b. Suspended or revoked a wholesale potato dealer's license that had been issued to the applicant;

- c. Refused to issue a wholesale potato dealer's license to an agent of the applicant; or
- d. Suspended or revoked a wholesale potato dealer's license that had been issued to an agent of the applicant.

#### **4.1-57-04. Application for license - Required security.**

1. As a condition of licensure, the seed commissioner shall require an applicant to file a current financial statement prepared in accordance with generally accepted accounting principles and:
  - a. A cash bond or a surety bond, in an amount and form determined by the seed commissioner; or
  - b. An irrevocable letter of credit.
2. The form of security required by the seed commissioner under subsection 1 must be conditioned for:
  - a. The faithful performance of the person's duties as a wholesale potato dealer;
  - b. Compliance with all laws and rules relating to the purchase of potatoes by the wholesale potato dealer;
  - c. Prompt payment in the case of insolvency; and
  - d. The protection and benefit of any potato producer in this state during the period the license is in effect.

#### **4.1-57-05. Termination of bond - Notice to seed commissioner - Suspension of license.**

The surety may terminate its liability under a bond by giving the seed commissioner at least ninety days' notice of intent to terminate. The surety is released from all future liability accruing on the bond after the expiration of ninety days from the date the seed commissioner received the notice or on a later date specified by the surety. This section does not relieve, release, or discharge the surety from any liability incurred before the expiration of the ninety-day period. Unless the wholesale potato dealer files a new bond or an irrevocable letter of credit at least thirty days before the surety's liability ceases, the seed commissioner, without hearing, shall suspend the wholesale potato dealer's license. The seed commissioner may not remove the suspension until a new bond or an irrevocable letter of credit has been filed with and approved by the seed commissioner.

#### **4.1-57-06. License - Fee - Expiration.**

The seed commissioner shall establish the fee for a wholesale potato dealer's license, subject to approval by the seed commission. A license issued under this chapter expires on June thirtieth of each year.

#### **4.1-57-07. License - Posting.**

The wholesale potato dealer shall post the license or a certified copy of the license in the office at each location where the dealer transacts business.

**4.1-57-08. License - Refusal - Suspension - Cancellation - Grounds.**

1. The seed commissioner may refuse to issue a license to operate as a wholesale potato dealer if:
  - a. The applicant was refused a wholesale potato dealer's license by another state;
  - b. The applicant had a wholesale potato dealer's license suspended or revoked by another state; or
  - c. The applicant employs in a position of responsibility an individual who had a wholesale potato dealer's license suspended or revoked by another state.
2. The seed commissioner may suspend or revoke a license to operate as a wholesale potato dealer if:
  - a. The dealer had a wholesale potato dealer's license suspended or revoked by another state;
  - b. The dealer employs in a position of responsibility an individual who had a wholesale potato dealer's license suspended or revoked by another state;  
or
  - c. The dealer has been convicted of:
    - (1) An offense under section 4.1-57-22;
    - (2) An offense involving fraudulent use of the mails; or
    - (3) Any other offense pertaining to the conduct of the person as a wholesale potato dealer.

**4.1-57-09. Agent of licensee - Ineligibility.**

The seed commissioner may determine that an individual may not act as an authorized agent for a licensee if the individual was refused a wholesale potato dealer's license by another state or if the individual had a wholesale potato dealer's license suspended or revoked by another state.

**4.1-57-10. Accounts and records.**

A wholesale potato dealer shall keep accurate accounts and retain records of all transactions as a dealer for eighteen months. The dealer shall make the records available to the seed commissioner upon request.

**4.1-57-11. Discontinuation of business - Duty of dealer.**

If a wholesale potato dealer sells, disposes of, or discontinues the business for which the dealer obtained a license during the period covered by the license, the dealer shall notify the seed commissioner in writing and, at the request of the seed commissioner, produce a statement of assets and liabilities as of the date the business was sold, disposed of, or discontinued.

#### **4.1-57-12. Bonds - Requirements for increase - Production of verified financial statements - Hearing.**

The seed commissioner may at any time require an increase in the amount of a wholesale potato dealer's bond. The seed commissioner may at any time require verified financial statements from a dealer. If a dealer fails to furnish the information or fails to furnish a new or higher bond when directed by the seed commissioner, the seed commissioner shall suspend the dealer's license. After providing the dealer with at least ten days' notice and a hearing, the seed commissioner may revoke the dealer's license.

#### **4.1-57-13. Seed commissioner - Appointment as trustee.**

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

#### **4.1-57-14. Report - Notice to claimants - Payment of claims.**

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

#### **4.1-57-15. Representation of seed commissioner.**

The attorney general shall represent the seed commissioner in any action or proceeding brought under this chapter and may employ legal assistance when necessary. Any expenses incurred by the attorney general in providing representation to the seed commissioner may be deducted from the trust fund.

#### **4.1-57-16. Inspection of potatoes - Rights to demand certificate of inspection.**

1. When potatoes are ready for sale or are on their way to market, the owner, conveyor, prospective buyer, or any other interested party may demand and is entitled to inspection of the potatoes and to an inspection certificate as provided by law.
2. Whenever potatoes are shipped to or received by a wholesale potato dealer for handling, purchase, or sale in this state and the wholesale potato dealer finds the potatoes to be spoiled, damaged, unmarketable, in unsatisfactory condition, mislabeled, or misrepresented in any way, unless both parties waive inspection before sale or other disposition, the wholesale potato dealer shall cause the potatoes to be examined by an inspector assigned by the seed commissioner for that purpose. The inspector shall execute and deliver a certificate to the wholesale potato dealer stating the day, the time, and the place of inspection and the condition of the potatoes. The wholesale potato dealer shall mail or deliver a copy of the certificate to the shipper of the inspected potatoes.

#### **4.1-57-17. Report by wholesale potato dealer - Payment.**

A wholesale potato dealer to whom potatoes have been shipped or consigned for sale and to whom title has not yet passed shall provide to the person who shipped or consigned the potatoes, within a reasonable time after receiving the potatoes, a written report detailing the potatoes' time of arrival, the quantity, the quality, and the price per unit. At the time of providing the report, the wholesale potato dealer shall pay the person who shipped or consigned the potatoes the net amount due for the potatoes.

#### **4.1-57-18. Sales reports unsatisfactory - Remedy of shipper.**

If a person who shipped or consigned the potatoes, after demand, receives no payment or report of sale of potatoes, or is dissatisfied with the remittance, sale, or report, the shipper may file a complaint with the seed commissioner. Upon receipt of a complaint, the seed commissioner shall initiate an investigation.

#### **4.1-57-19. Investigation - Hearing - Action on license.**

1. If the seed commissioner receives a complaint against any person dealing in, shipping, transporting, storing, or selling potatoes, the seed commissioner may initiate an investigation.
2. The seed commissioner may enter upon real property and access any structure and personal property at any time to inspect and sample potatoes for compliance with the laws of this state.
3. After an investigation, the seed commissioner may suspend the license of any wholesale potato dealer. Within ten days of the suspension, the seed

commissioner shall schedule, provide notice of, and hold a hearing on the suspension.

4. After receiving both testimony and documentary evidence, the seed commissioner may reverse the suspension, continue the suspension, or revoke the wholesale potato dealer's license. If appropriate, the seed commissioner may demand the return of any agent's identification card issued by the seed commissioner.
5. Any aggrieved party may appeal a decision of the seed commissioner under this section to the district court.

#### **4.1-57-20. Fees and collections - Continuing appropriation.**

The seed commissioner shall forward all moneys received from the collection of fees and other charges under this chapter to the state treasurer for deposit in a special fund known as the seed department fund. All moneys in the seed department fund are appropriated on a continuing basis to the state seed department to carry out statutory directives.

#### **4.1-57-21. Enforcement of chapter.**

The seed commissioner shall do all things necessary to enforce this chapter and rules implementing this chapter. The attorney general or the state's attorney in the county where a case arises shall prosecute violations of this chapter and the rules.

#### **4.1-57-22. Violations of chapter - Penalty.**

A person is guilty of a class A misdemeanor if the person:

1. Makes any false statement or report as to the grade, condition, markings, quality, or quantity of potatoes received or delivered, or acts in a manner designed to deceive the consignor or purchaser of the potatoes;
2. Breaches any contract for the purchase or sale of potatoes to which the person was a party unless the breach is based on a state inspection certificate, secured with reasonable promptness after receipt of the shipment and showing that the kind or quality of potatoes is not that which was purchased or ordered;
3. Fails to account for potatoes or to pay for potatoes within the time required by this chapter;
4. Purchases for the person's own account any potatoes received on consignment, either directly or indirectly, without the consent of the consignor;
5. Issues false or misleading market quotations;
6. Cancels any quotations during the period advertised by the person;
7. Makes any false or misleading statement on an application for licensure as a wholesale potato dealer;
8. Increases the sales charges on shipped potatoes by means of fictitious sales;

9. Receives potatoes from foreign states or countries for sale or resale, within or outside this state, and gives the purchaser the impression through any method of advertising or description that the potatoes are from a source other than their true origin; or

10. Violates this chapter or any rule implementing this chapter.

**\*SECTION 6.** A new section to chapter 11-11 of the North Dakota Century Code is created and enacted as follows:

**Limitation on authority - Seed.**

Notwithstanding any other law, a county may not impose any requirements or restrictions pertaining to the registration, labeling, distribution, sale, handling, use, application, transportation, or disposal of seed.

**SECTION 7.** A new section to chapter 40-05 of the North Dakota Century Code is created and enacted as follows:

**Limitation on authority - Seed.**

Notwithstanding any other law, a city may not impose any requirements or restrictions pertaining to the registration, labeling, distribution, sale, handling, use, application, transportation, or disposal of seed. This section does not apply to city zoning ordinances.

**SECTION 8.** A new section to chapter 58-03 of the North Dakota Century Code is created and enacted as follows:

**Limitation on authority - Seed.**

Notwithstanding any other law, a township may not impose any requirements or restrictions pertaining to the registration, labeling, distribution, sale, handling, use, application, transportation, or disposal of seed.

**SECTION 9. AMENDMENT.** Section 60-02-01 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-01. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Commission" means the public service commission.
2. "Credit-sale contract" means a written contract for the sale of grain pursuant to which the sale price is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale and which contains the notice provided in subsection 7 of section 60-02-19.1. 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. "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" as defined in this chapter shall not include grain or grass seeds owned by or in the possession of the warehouseman that have been cleaned,

processed, and specifically identified for an intended use of planting for reproduction and for which a warehouse receipt has not been issued.

4. "Noncredit-sale contract" means a contract for the sale of grain other than a credit-sale contract.
5. "Public warehouse" means any elevator, mill, warehouse, subterminal, grain warehouse, terminal warehouse, or other structure or facility not licensed under the United States Warehouse Act [7 U.S.C. 241-273] in which grain is received for storing, buying, selling, shipping, or processing for compensation. Provided, however, that nothing in this chapter shall be construed to require a processor to receive, store, or purchase any lot or kind of grain at said facility.
6. "Public warehouseman" means the person operating a public warehouse that is located or doing business within this state, whether or not such owner or operator resides within this state. The term does not include a person who is permitted to sell seed under chapter ~~4-094.1-53~~, if that person does not store grain for the public and buys grain only for processing and subsequent resale as seed, or an authorized dealer or agent of a seed company holding a permit in accordance with section ~~4-09-14.44.1-53-38~~.
7. "Receipts" means grain warehouse receipts, scale tickets, checks, or other memoranda given by a public warehouseman for, or as evidence of, the receipt, storage, or sale of grain except when such memoranda was received as a result of a credit-sale contract.
8. "Receiving station" means any facility other than an individually licensed warehouse that is used by a licensed public warehouseman to receive and temporarily store grain prior to transferring the grain to the warehouseman's primary licensed warehouse location or delivering it directly to market.

**SECTION 10. 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" means the public service commission.
2. "Credit-sale contract" means a written contract for the sale of grain pursuant to which the sale price is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale and 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 ~~4-09.1-53~~, 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 ~~4-09-14.44.1-53-38~~.
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 11. REPEAL.** Chapters 4-09, 4-09.1, 4-11, 4-25, and 4-42 of the North Dakota Century Code are repealed.

Approved March 28, 2011  
Filed March 28, 2011

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\* Section 6 was codified as section 11-11-68 of House Bill No. 1027.

## CHAPTER 70

### HOUSE BILL NO. 1399

(Representatives D. Johnson, Kingsbury, Mueller)  
(Senators Flakoll, Miller)

AN ACT to amend and reenact sections 4-09-06.1, 4-11-01, 4-11-03, 4-11-04, 4-11-04.1, 4-11-14, 4-11-15.2, 4-11-20, 4-11-22, and 4-11-23 of the North Dakota Century Code or in the alternative to amend and reenact sections 4.1-53-10, 4.1-53-35, 4.1-57-01, 4.1-57-03, 4.1-57-04, 4.1-57-05, 4.1-57-12, 4.1-57-15, 4.1-57-19, 4.1-57-21, and 4.1-57-22 of the North Dakota Century Code, relating to label requirements, phytosanitary certificates, and wholesale potato dealers; to repeal sections 4-09-22, 4-11-17, and 4-11-18 of the North Dakota Century Code or in the alternative to repeal sections 4.1-53-56, 4.1-57-17, and 4.1-57-18 of the North Dakota Century Code, relating to reports, complaints, and the prosecution of violations pertaining to the sale of potatoes; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** If House Bill No. 1027 does not become effective, section 4-09-06.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **4-09-06.1. Inspection - Export certification - Fees.**

~~The commissioner may inspect agricultural seed, flower seed, vegetable seed, tree and shrub seed, and Irish potato tubers when the seed or tubers are offered for export. The commissioner may issue a phytosanitary certificate to plant quarantine officials and may make reasonable charges for this service. The commissioner may withhold the certificate if the product does not meet sanitary requirements and all state licensing and bonding requirements. The name and address of the consignee on the phytosanitary certificate is confidential if authorized to do so by the United States department of agriculture animal and plant health inspection service or the agriculture commissioner.~~

**SECTION 2. AMENDMENT.** If House Bill No. 1027 does not become effective, section 4-11-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **4-11-01. Definitions.**

In this chapter, unless the context otherwise requires:

1. "Commissioner" means the state seed commissioner.
2. ~~"Insolvency" means an unablensess or unwillingness to provide payment for potatoes purchased by the dealer.~~
3. "Potato" means a tuber commonly classed as white or Irish.
4. 3. "Wholesale potato dealer" means any person who buys potatoes in wholesale lots directly from a grower or grower cooperative, who sells or handles

potatoes in wholesale lots for the purpose of processing or resale, or who handles potatoes on account of or as an agent for another.

**SECTION 3. AMENDMENT.** If House Bill No. 1027 does not become effective, section 4-11-03 of the North Dakota Century Code is amended and reenacted as follows:

**4-11-03. Application for license - Contents.**

To obtain a license as a wholesale potato dealer, a person must complete an application and submit it to the commissioner. The application must be signed by the applicant ~~under oath~~ and notarized and must include:

1. The location in which the applicant intends to operate as a wholesale potato dealer.
2. The estimated dollar amount of business to be done monthly.
3. The dollar amount of business done the preceding year, if any.
4. The greatest volume of potatoes, by hundredweight, purchased during any one month in the preceding calendar year.
5. The greatest value of potatoes purchased during any one month in the preceding calendar year.
6. The name of each partner if the applicant is a partnership.
7. The name of each corporate officer and the state of incorporation if the applicant is a corporation.
8. The name of each manager and the state of organization if the applicant is a limited liability company.
9. The name of every agent employed by the applicant on the date of the application.
10. A financial statement prepared in accordance with generally accepted accounting principles and showing the assets and liabilities of the applicant.
11. A list of similar licenses issued to the applicant in other states.
12. The name of every state that has:
  - a. Denied the applicant's request for similar licensure;
  - b. Denied a request for similar licensure submitted by an agent employed by the applicant;
  - c. Issued to the applicant a similar license and thereafter suspended or revoked the license; or
  - d. Issued to an agent of the applicant a similar license and thereafter suspended or revoked the agent's license.

**SECTION 4. AMENDMENT.** If House Bill No. 1027 does not become effective, section 4-11-04 of the North Dakota Century Code is amended and reenacted as follows:

**4-11-04. Form of security to accompany application for license.**

The commissioner may require the applicant to file a ~~current financial statement prepared in accordance with generally accepted accounting principles,~~ a cash bond or a surety bond in an amount and form determined by the commissioner, or an irrevocable letter of credit. ~~The form of security required by the commissioner must be conditioned for the faithful performance of the applicant's duties as a wholesale potato dealer, for compliance with all laws and rules relating to the purchase of potatoes by the dealer, for prompt payment in the case of insolvency, and for the protection and is for the benefit of any potato producer in this state during the period the license is in effect and must be conditioned for the payment of any financial obligation owed by a wholesale potato dealer to a potato producer in this state.~~

**SECTION 5. AMENDMENT.** If House Bill No. 1027 does not become effective, section 4-11-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**4-11-04.1. Termination of bond - Notice to commissioner.**

The surety may terminate its liability under a bond by giving the commissioner at least ninety days' written notice of intent to terminate. The surety on a bond is released from all future liability accruing on the bond after the expiration of ninety days from the date the commissioner received the notice or on a later date specified by the surety. This section does not relieve, release, or discharge the surety from any liability incurred before the expiration of the ninety-day period. Unless the wholesale potato dealer files a new bond at least thirty days before the surety's liability ceases, the commissioner, without hearing, shall suspend the wholesale potato dealer's license. The commissioner may not remove the suspension until a new bond or other form of surety has been filed and approved by the commissioner.

**SECTION 6. AMENDMENT.** If House Bill No. 1027 does not become effective, section 4-11-14 of the North Dakota Century Code is amended and reenacted as follows:

**4-11-14. ~~Bonds~~Security - Additional required.**

The commissioner ~~may~~ at any time ~~require an~~ may increase in the amount of the security required of a wholesale potato ~~dealer's bond~~ dealer. The commissioner ~~may~~ at any time may require verified financial statements from a dealer. If a dealer fails to furnish the information or fails to ~~furnish a new or higher bond~~ provide increased security when directed by the commissioner, the commissioner shall suspend the dealer's license. After providing the dealer with at least ten days' notice and a hearing, the commissioner may revoke the dealer's license.

**SECTION 7. AMENDMENT.** If House Bill No. 1027 does not become effective, section 4-11-15.2 of the North Dakota Century Code is amended and reenacted as follows:

**4-11-15.2. Representation of commissioner by attorney general.**

~~The attorney general shall represent the commissioner in any action or proceeding brought under this chapter and may employ legal assistance when necessary.~~ Any expenses incurred by the attorney general in providing representation

~~to the commissioner in carrying out the duties set forth in sections 4.1-57-13 and 4.1-57-14 may be deducted from the trust fund.~~

**SECTION 8. AMENDMENT.** If House Bill No. 1027 does not become effective, section 4-11-20 of the North Dakota Century Code is amended and reenacted as follows:

**4-11-20. Investigation - Hearing - Action on license.**

~~If the commissioner receives a complaint against any person dealing in, shipping, transporting, storing, or selling potatoes, the commissioner may initiate an investigation.~~ The commissioner and the commissioner's agents have access, at all times, to all buildings, yards, warehouses, storage, and transportation facilities, and railway cars in which any potatoes are kept, stored, handled, or transported, and may take any necessary samples. After an investigation, the commissioner may suspend the license of any wholesale potato dealer. The commissioner shall schedule, provide notice of, and hold a hearing on the suspension within ten days of the action. After receiving both testimony and documentary evidence, the commissioner may reverse the suspension, continue the suspension, or revoke the wholesale potato dealer's license. If appropriate, the commissioner may demand the return of any agent's identification card issued by the commissioner. Any hearing held under this section must be conducted in accordance with chapter 28-32. Any aggrieved party may appeal a decision of the commissioner under this section to the district court in accordance with chapter 28-32.

**SECTION 9. AMENDMENT.** If House Bill No. 1027 does not become effective, section 4-11-22 of the North Dakota Century Code is amended and reenacted as follows:

**4-11-22. Enforcement of chapter.**

The commissioner is charged with the enforcement of this chapter and all rules adopted to implement this chapter. ~~The attorney general or the state's attorney in the county where a case arises shall prosecute violations of this chapter and the rules.~~

**SECTION 10. AMENDMENT.** If House Bill No. 1027 does not become effective, section 4-11-23 of the North Dakota Century Code is amended and reenacted as follows:

**4-11-23. Violations of chapter defined - Penalty.**

1. A person is guilty of a class A misdemeanor and subject to a civil penalty in an amount up to five hundred dollars per violation, which may be imposed by a court or by the seed commissioner in an administrative hearing, if the person:
  - a. Makes any false statement or report as to the grade, condition, markings, quality, or quantity of potatoes received or delivered, or acts in a manner designed to deceive the consignor or purchaser of the potatoes;
  - b. Refuses to accept, on agreed terms, any shipment for which the person has contracted, unless the refusal is based on a state inspection certificate, secured with reasonable promptness after receipt of the shipment, and showing that the kind or quality of potatoes is not that which was purchased or ordered;

- c. Fails to account for potatoes or to pay for potatoes within the time required by this chapter;
  - d. Breaches any contract entered by the person for the purchase or sale of potatoes;
  - e. Purchases for the person's own account any potatoes received on consignment, either directly or indirectly, without the consent of the consignor;
  - f. Issues false or misleading market quotations;
  - g. Cancels any quotations during the period advertised by the person;
  - h. Makes any false or misleading statement on an application for licensure as a wholesale potato dealer;
  - i. Increases the sales charges on shipped potatoes by means of fictitious sales;
  - j. Fails to keep accurate records and financial accounts of all transactions as a wholesale potato dealer;
  - k. Receives potatoes from foreign states or countries for sale or resale, within or outside this state, and gives the purchaser the impression through any method of advertising or description that the potatoes are from a source other than their true origin; or
  - l. Violates this chapter or any rule adopted to implement this chapter.
2. If the commissioner is notified that a wholesale potato dealer has been convicted of an offense listed in this section, of an offense involving fraudulent use of the mails, or of any other criminal act pertaining to the conduct of the person as a wholesale potato dealer, the commissioner shall provide at least ten days' notice and hold a hearing to determine whether the wholesale potato dealer's license should be suspended or revoked.

<sup>17</sup> **SECTION 11. AMENDMENT.** Section 4.1-53-10 of the North Dakota Century Code as created by section 3 of House Bill No. 1027, as approved by the sixty-second legislative assembly, is amended and reenacted as follows:

**4.1-53-10. Seed commissioner - Powers.**

The seed commissioner may:

- 1. Contract with North Dakota state university of agriculture and applied science for the use of facilities and equipment;
- 2. Contract with any person for any lawful purpose;
- 3. Enter upon real property and access any structure and personal property, at any time, to:
  - a. Inspect, sample, and test seed for compliance with this chapter; and

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<sup>17</sup> Section 4.1-53-10 was created by section 3 of House Bill No. 1027, chapter 69.

- b. Inspect records for compliance with this chapter; ~~and~~
- 4. Collect royalty, research, and patent fees; and
- 5. Issue phytosanitary certificates if authorized to do so by the United States department of agriculture animal and plant health inspection service or the agriculture commissioner.

<sup>18</sup> **SECTION 12. AMENDMENT.** Section 4.1-53-35 of the North Dakota Century Code as created by section 3 of House Bill No. 1027, as approved by the sixty-second legislative assembly, is amended and reenacted as follows:

**4.1-53-35. Tree seed and shrub seed - Label requirements - Percentage of germination.**

- 1. If the tree seed or shrub seed belongs to a species for which standard germination testing procedures are prescribed by the association of official seed analysts, the label must include:
  - a. (1) The percentage of germination, exclusive of hard seed;
  - (2) The percentage of hard seed; and
  - (3) The month and year in which the percentage of germination was determined; or
  - b. A statement indicating that the test to determine the percentage of germination is not yet completed and that the results will be supplied upon request.
- 2. If the tree or shrub seed belongs to a species for which standard germination testing procedures are not prescribed, the label must include the year in which the seed was collected.

<sup>19</sup> **SECTION 13. AMENDMENT.** Section 4.1-57-01 of the North Dakota Century Code as created by section 5 of House Bill No. 1027, as approved by the sixty-second legislative assembly, is amended and reenacted as follows:

**4.1-57-01. Definitions.**

In this chapter, unless the context otherwise requires:

- 1. "~~Insolvency~~" means ~~an inability to provide payment for potatoes purchased by the dealer.~~
- 2. "Potato" means an Irish potato.
- ~~3-2.~~ "Wholesale potato dealer" means any person who:
  - a. Buys potatoes in wholesale lots directly from a producer or a producer cooperative;

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<sup>18</sup> Section 4.1-53-35 was created by section 3 of House Bill No. 1027, chapter 69.

<sup>19</sup> Section 4.1-57-01 was created by section 5 of House Bill No. 1027, chapter 69.

- b. Sells or handles potatoes in wholesale lots for the purpose of processing or resale; or
- c. Handles potatoes on account of or as an agent for another.

<sup>20</sup> **SECTION 14. AMENDMENT.** Section 4.1-57-03 of the North Dakota Century Code as created by section 5 of House Bill No. 1027, as approved by the sixty-second legislative assembly, is amended and reenacted as follows:

**4.1-57-03. Application for license - Content.**

To obtain a license as a wholesale potato dealer, a person must complete an application and submit it to the seed commissioner. The application must be signed by the applicant ~~under oath~~ and notarized and must include:

1. The location in which the applicant intends to operate as a wholesale potato dealer;
2. The estimated dollar amount of business to be done monthly;
3. The dollar amount of business done the preceding year, if any;
4. The greatest volume of potatoes, by hundredweight, purchased during any one month in the preceding calendar year;
5. The greatest value of potatoes purchased during any one month in the preceding calendar year;
6. The name of each partner if the applicant is a partnership;
7. The name of each corporate officer and the state of incorporation if the applicant is a corporation;
8. The name of each manager and the state of organization if the applicant is a limited liability company;
9. The name of every agent employed by the applicant on the date of the application;
10. A financial statement prepared in accordance with generally accepted accounting principles showing the assets and liabilities of the applicant;
11. A list of similar licenses issued to the applicant by other states; and
12. The name of each state that has:
  - a. Refused to issue the applicant a wholesale potato dealer's license;
  - b. Suspended or revoked a wholesale potato dealer's license that had been issued to the applicant;
  - c. Refused to issue a wholesale potato dealer's license to an agent of the applicant; or

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<sup>20</sup> Section 4.1-57-03 was created by section 5 of House Bill No. 1027, chapter 69.



- d. Suspended or revoked a wholesale potato dealer's license that had been issued to an agent of the applicant.

<sup>21</sup> **SECTION 15. AMENDMENT.** Section 4.1-57-04 of the North Dakota Century Code as created by section 5 of House Bill No. 1027, as approved by the sixty-second legislative assembly, is amended and reenacted as follows:

**4.1-57-04. Application for license - Required security.**

1. As a condition of licensure, the seed commissioner shall require an applicant to file ~~a current financial statement prepared in accordance with generally accepted accounting principles and:~~
  - a. A cash bond or a surety bond, in an amount and form determined by the seed commissioner; or
  - b. An irrevocable letter of credit.
2. The ~~form of security~~ required by the seed commissioner under subsection 1 is for the benefit of potato producers in this state and must be conditioned for:
  - a. ~~The faithful performance of the person's duties as a wholesale potato dealer;~~
  - b. ~~Compliance with all laws and rules relating to the purchase of potatoes by the wholesale potato dealer;~~
  - c. ~~Prompt payment in the case of insolvency; and~~
  - d. ~~The protection and benefit of any potato producer in this state during the period the license is in effect~~ the payment of any financial obligation owed by a wholesale potato dealer to a potato producer in this state.

<sup>22</sup> **SECTION 16. AMENDMENT.** Section 4.1-57-05 of the North Dakota Century Code as created by section 5 of House Bill No. 1027, as approved by the sixty-second legislative assembly, is amended and reenacted as follows:

**4.1-57-05. Termination of bond - Notice to seed commissioner - Suspension of license.**

The surety may terminate its liability under a bond by giving the seed commissioner at least ninety days' written notice of intent to terminate. The surety is released from all future liability accruing on the bond after the expiration of ninety days from the date the seed commissioner received the notice or on a later date specified by the surety. This section does not relieve, release, or discharge the surety from any liability incurred before the expiration of the ninety-day period. Unless the wholesale potato dealer files a new bond or an irrevocable letter of credit at least thirty days before the surety's liability ceases, the seed commissioner, without hearing, shall suspend the wholesale potato dealer's license. The seed commissioner may not remove the suspension until a new bond or an irrevocable letter of credit has been filed with and approved by the seed commissioner.

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<sup>21</sup> Section 4.1-57-04 was created by section 5 of House Bill No. 1027, chapter 69.

<sup>22</sup> Section 4.1-57-05 was created by section 5 of House Bill No. 1027, chapter 69.

<sup>23</sup> **SECTION 17. AMENDMENT.** Section 4.1-57-12 of the North Dakota Century Code as created by section 5 of House Bill No. 1027, as approved by the sixty-second legislative assembly, is amended and reenacted as follows:

**4.1-57-12. ~~Bonds~~Security - Requirements for increase - Production of verified financial statements - Hearing.**

The seed commissioner ~~may~~ at any time ~~require an~~ increase in the amount the security required of a wholesale potato dealer's ~~bond~~dealer. The seed commissioner ~~may~~ at any time may require verified financial statements from a dealer. If a dealer fails to furnish the information or fails to ~~furnish a new or higher bond~~provide increased security when directed by the seed commissioner, the seed commissioner shall suspend the dealer's license. After providing the dealer with at least ten days' notice and a hearing, the seed commissioner may revoke the dealer's license.

<sup>24</sup> **SECTION 18. AMENDMENT.** Section 4.1-57-15 of the North Dakota Century Code as created by section 5 of House Bill No. 1027, as approved by the sixty-second legislative assembly, is amended and reenacted as follows:

**4.1-57-15. ~~Representation~~Expenses of seed commissioner - Deduction from trust fund.**

~~The attorney general shall represent the seed commissioner in any action or proceeding brought under this chapter and may employ legal assistance when necessary. Any expenses incurred by the attorney general in providing representation to the seed commissioner in carrying out the duties set forth in sections 4.1-57-13 and 4.1-57-14 may be deducted from the trust fund.~~

<sup>25</sup> **SECTION 19. AMENDMENT.** Section 4.1-57-19 of the North Dakota Century Code as created by section 5 of House Bill No. 1027, as approved by the sixty-second legislative assembly, is amended and reenacted as follows:

**4.1-57-19. Investigation - Hearing - Action on license.**

- ~~1. If the seed commissioner receives a complaint against any person dealing in, shipping, transporting, storing, or selling potatoes, the seed commissioner may initiate an investigation.~~
2. The seed commissioner may enter upon real property and access any structure and personal property at any time to inspect and sample potatoes for compliance with the laws of this state.
- ~~3-2.~~ 2. After an investigation, the seed commissioner may suspend the license of any wholesale potato dealer. Within ten days of the suspension, the seed commissioner shall schedule, provide notice of, and hold a hearing on the suspension.
- ~~4-3.~~ 3. After receiving both testimony and documentary evidence, the seed commissioner may reverse the suspension, continue the suspension, or revoke the wholesale potato dealer's license. If appropriate, the seed

<sup>23</sup> Section 4.1-57-12 was created by section 5 of House Bill No. 1027, chapter 69.

<sup>24</sup> Section 4.1-57-15 was created by section 5 of House Bill No. 1027, chapter 69.

<sup>25</sup> Section 4.1-57-19 was created by section 5 of House Bill No. 1027, chapter 69.

commissioner may demand the return of any agent's identification card issued by the seed commissioner.

~~5-4.~~ Any aggrieved party may appeal a decision of the seed commissioner under this section to the district court.

<sup>26</sup> **SECTION 20. AMENDMENT.** Section 4.1-57-21 of the North Dakota Century Code as created by section 5 of House Bill No. 1027, as approved by the sixty-second legislative assembly, is amended and reenacted as follows:

**4.1-57-21. Enforcement of chapter.**

The seed commissioner shall do all things necessary to enforce this chapter and rules implementing this chapter. ~~The attorney general or the state's attorney in the county where a case arises shall prosecute violations of this chapter and the rules.~~

<sup>27</sup> **SECTION 21. AMENDMENT.** Section 4.1-57-22 of the North Dakota Century Code as created by section 5 of House Bill No. 1027, as approved by the sixty-second legislative assembly, is amended and reenacted as follows:

**4.1-57-22. Violations of chapter - Penalty.**

A person is guilty of a class A misdemeanor and subject to a civil penalty in an amount up to five hundred dollars per violation, which may be imposed by a court or by the seed commissioner in an administrative hearing, if the person:

1. Makes any false statement or report as to the grade, condition, markings, quality, or quantity of potatoes received or delivered, or acts in a manner designed to deceive the consignor or purchaser of the potatoes;
2. Breaches any contract for the purchase or sale of potatoes to which the person was a party unless the breach is based on a state inspection certificate, secured with reasonable promptness after receipt of the shipment and showing that the kind or quality of potatoes is not that which was purchased or ordered;
3. Fails to account for potatoes or to pay for potatoes within the time required by this chapter;
4. Purchases for the person's own account any potatoes received on consignment, either directly or indirectly, without the consent of the consignor;
5. Issues false or misleading market quotations;
6. Cancels any quotations during the period advertised by the person;
7. Makes any false or misleading statement on an application for licensure as a wholesale potato dealer;
8. Increases the sales charges on shipped potatoes by means of fictitious sales;
9. Receives potatoes from foreign states or countries for sale or resale, within or outside this state, and gives the purchaser the impression through any method

<sup>26</sup> Section 4.1-57-21 was created by section 5 of House Bill No. 1027, chapter 69.

<sup>27</sup> Section 4.1-57-22 was created by section 5 of House Bill No. 1027, chapter 69.

of advertising or description that the potatoes are from a source other than their true origin; or

10. Violates this chapter or any rule implementing this chapter.

**SECTION 22. REPEAL.** If House Bill No. 1027 does not become effective, sections 4-09-22, 4-11-17, and 4-11-18 of the North Dakota Century Code are repealed.

<sup>28</sup> **SECTION 23. REPEAL.** Sections 4.1-53-56, 4.1-57-17, and 4.1-57-18 of the North Dakota Century Code as created by House Bill No. 1027, as approved by the sixty-second legislative assembly, are repealed.

Approved April 8, 2011

Filed April 11, 2011

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<sup>28</sup> Section 4.1-53-56 was created by section 3 of House Bill No. 1027, chapter 69; section 4.1-57-17 was created by section 5 of House Bill No. 1027, chapter 69; section 4.1-57-18 was created by section 5 of House Bill No. 1027, chapter 69.

# ALCOHOLIC BEVERAGES

## CHAPTER 71

### SENATE BILL NO. 2133

(Senators Flakoll, Olafson, Schneider)  
(Representatives Beadle, Maragos, Thoreson)

AN ACT to create and enact a new section to chapter 5-01 of the North Dakota Century Code, relating to using false identification to obtain alcoholic beverages.

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

**SECTION 1.** A new section to chapter 5-01 of the North Dakota Century Code is created and enacted as follows:

##### Proof of age - Seizure of false identification.

1. A licensed retailer of alcoholic beverages or an employee of a licensed retailer may determine proof of age for purchasing or consuming an alcoholic beverage solely by inspection of one of the following:
  - a. A valid driver's license or identification card issued by this state, another state, or a province of Canada which includes the photograph and date of birth of the licensed individual;
  - b. A valid military identification card issued by the United States department of defense; or
  - c. A valid passport issued or recognized by the United States.
2. A licensed retailer or an employee of a licensed retailer may seize a form of identification displayed as proof of age if the licensed retailer or an employee of a licensed retailer has a reasonable belief that the form of identification has been altered, falsified, or is being used to unlawfully obtain alcoholic beverages.
3. Within twenty-four hours of seizing a form of identification as allowed under this section, a licensed retailer or an employee of a licensed retailer shall notify a law enforcement agency of the seizure and the law enforcement agency shall take possession of the identification within twenty-four hours after receipt of the notice.

Approved April 19, 2011  
Filed April 19, 2011

## CHAPTER 72

### HOUSE BILL NO. 1099

(Finance and Taxation Committee)  
(At the request of the Tax Commissioner)

AN ACT to amend and reenact subsection 2 of section 5-01-17, subsection 2 of section 5-01-19, section 5-03-06, subsections 3 and 5 of section 57-36-14, subsection 7 of section 57-40.2-07, and sections 57-40.3-09, 57-43.1-44, and 57-43.2-37 of the North Dakota Century Code, relating to special events permits for domestic wineries and domestic distilleries, direct shipments of alcoholic beverages, procedures available to the tax commissioner in case of seizure of tobacco products, reporting and remittance of use tax collected during odd-numbered years, the definition of state for motor vehicle excise tax reciprocity purposes, cooperative agreements for the exchange of motor fuels tax information, and cooperative agreements for the exchange of special fuels tax information.

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

<sup>29</sup> **SECTION 1. AMENDMENT.** Subsection 2 of section 5-01-17 of the North Dakota Century Code is amended and reenacted as follows:

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 [94625 liters] in a calendar year; glassware; wine literature and accessories; and cheese, cheese spreads, and other snack food items. A licensee may dispense free samples of the wines offered for sale. Subject to local ordinance, sales at on sale and off sale may be made on Sundays between twelve noon and twelve midnight. The state tax commissioner may issue special events permits for not more than twenty ~~days~~ 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 a designated trade show, convention, festival, or a similar event approved by the ~~state~~ tax commissioner. 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 ~~state~~ tax commissioner no later than the last day of each calendar month reporting sales made during the preceding calendar month. When the last day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day thereafter.

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<sup>29</sup> Section 5-01-17 was also amended by section 11 of Senate Bill No. 2009, chapter 35.

<sup>30</sup> **SECTION 2. AMENDMENT.** Subsection 2 of section 5-01-19 of the North Dakota Century Code is amended and reenacted as follows:

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 [94625 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 events permits for not more than twenty ~~days~~ events 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 a designated trade show, convention, festival, or similar event approved by the tax commissioner. 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 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.

**SECTION 3. AMENDMENT.** Section 5-03-06 of the North Dakota Century Code is amended and reenacted as follows:

**5-03-06. Examination by tax commissioner - Penalty for improper returns.**

The state tax commissioner may at any reasonable time make an examination of the books and premises of any retailer, wholesaler, manufacturer, domestic winery, domestic distillery, microbrew pub, direct shipper, or other person to determine if such person has fully complied with all statutes and rules pertaining to the person's business. If any manufacturer, wholesaler, domestic winery, domestic distillery, ~~or~~ microbrew pub, or direct shipper liable for any taxes imposed by this chapter fails to pay such tax on the date payment is due, there must be added to the tax a penalty of five percent of the total amount of the tax or five dollars, whichever is greater, plus interest of one percent of the tax per month or fraction of a month of delay, except the first month after the return or tax became due. Any manufacturer, wholesaler, domestic winery, domestic distillery, ~~or~~ microbrew pub, or direct shipper failing to furnish reports when required must be assessed a penalty of one hundred dollars for

<sup>30</sup> Section 5-01-19 was also amended by section 12 of Senate Bill No. 2009, chapter 35.

each day such reports are delinquent. The state tax commissioner may forgive all or part of any penalty for good cause shown. The tax commissioner shall give notice of the determination to the person liable for tax. If the determination of tax due relates to an incorrect or insufficient return filed by a taxpayer, notice of the determination must be given not later than three years after the last day on which the return was due or three years after the return was filed, whichever is later. If it is determined upon audit by the tax commissioner that the tax due was twenty-five percent or more above the amount reported on the return, notice of determination of tax due must be given not later than six years after the last day on which the return was due or six years after the return was filed, whichever was later. Notice of determination of tax due for any reporting period for which a taxpayer failed to file a return must be given not later than six years after the due date of the return, but if fraudulent information is given in a return or the failure to file a return is due to the fraudulent intent or willful attempt of the taxpayer in any manner to evade the tax, the time limitation provided in this section for giving notice of the determination of tax due does not apply. If any manufacturer, wholesaler, domestic winery, domestic distillery, or microbrew pub, or direct shipper files a fraudulent return, there must be added to the tax an amount equal to the tax evaded or attempted to be evaded and such manufacturer, wholesaler, domestic winery, domestic distillery, or microbrew pub, or direct shipper is also guilty of a class C felony. All such taxes and civil penalties may be collected by assessment or distraint, and no court of this state may enjoin the collection of any such tax or civil penalty. No wholesaler may purchase alcoholic beverages from a manufacturer after notice from the state tax commissioner that such manufacturer has failed to file required reports with the tax commissioner's office. Any manufacturer, wholesaler, domestic winery, domestic distillery, or microbrew pub, or direct shipper may have its license suspended or revoked for violation of any of the provisions of this title after a hearing conducted similar to that prescribed by this law.

**SECTION 4. AMENDMENT.** Subsections 3 and 5 of section 57-36-14 of the North Dakota Century Code are amended and reenacted as follows:

3. In case a judgment of forfeiture is entered, the tax commissioner, unless ~~such~~the judgment is stayed pending an appeal to the supreme court, as soon as convenient, shall ~~sell such~~destroy the forfeited property ~~and cover the proceeds, less court costs, into the common schools trust fund of the state.~~
5. In the event that no demand for judicial determination is made, ~~such~~the seized property must be deemed forfeited to the state by operation of law, and the tax commissioner ~~thereupon may sell~~shall destroy the same.

**SECTION 5. 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, ~~except for taxes collected during May of each odd-numbered year, which are payable on or before the twenty-second day of June of that year.~~ 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 6. AMENDMENT.** Section 57-40.3-09 of the North Dakota Century Code is amended and reenacted as follows:

**57-40.3-09. Credit for excise tax paid in other states - Reciprocity.**

If any motor vehicle has been subjected already to a sales tax, use tax, or motor vehicle excise tax by any other state, or political subdivision thereof, in respect to its sale or use in an amount less than the tax imposed by this chapter, the provisions of this chapter apply, but at a rate measured by the difference only between the rate fixed in this chapter and the rate by which the previous tax paid in the other state, or political subdivision thereof, upon the sale or use was computed. If the rate of tax imposed in such other state, or political subdivision thereof, is the same or more than the rate of tax imposed by this chapter, then no tax is due on such motor vehicle. The provisions of this section apply only if such other state, or political subdivision thereof, allows a credit with respect to the excise tax imposed by this chapter which is substantially similar in effect to the credit allowed by this section. For purposes of this section, "state" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

**SECTION 7. AMENDMENT.** Section 57-43.1-44 of the North Dakota Century Code is amended and reenacted as follows:

**57-43.1-44. Cooperative motor vehicle fuels agreements ~~between states.~~**

1. The director may enter into cooperative agreements ~~with other states~~ for exchange of information and auditing of users of motor fuels used in fleets of motor vehicles operated or intended to operate interstate or internationally. An agreement or amendment to an agreement is not effective until filed in writing with the director.
2. An agreement under this section may provide for determining the base ~~state~~ for users, users' records requirements, audit procedures, exchange of information, persons eligible for tax licensing, defining qualified motor vehicles, determining if bonding is required, specifying reporting requirements and periods including defining the uniform penalty and interest rates for late reporting, determining methods for collecting and forwarding of motor fuel taxes and penalties to another jurisdiction, and other provisions as will facilitate the administration of the agreement.
3. The director may, as required by the terms of the agreement, forward ~~to officers of another state any~~ information in the director's or commissioner's possession relative to the manufacture, receipt, sale, use, transportation, or shipment of motor fuels by any person. The director may disclose ~~to officers of another state~~ the location of officers, motor vehicles, and other real and personal property of users of motor fuels.
4. An agreement may provide for ~~each state to audit the records of persons based in the state~~ audits of users of motor fuels used in fleets of motor vehicles operated or intended to operate interstate or internationally, to

determine if the motor fuel taxes due ~~each state~~ are properly reported and paid. ~~Each state shall forward the~~The findings of the audits performed on persons ~~based in the state, to each state in which the person has~~that have a taxable use of motor fuels may be shared among parties to a cooperative agreement. For persons not based in this state and who have taxable use of motor fuel in this state, the director or the commissioner may serve the audit findings ~~received from another state~~, in the form of an assessment, on the person as though an audit was conducted by the director or the commissioner.

5. Any agreement entered under this section does not preclude the director or the commissioner from auditing the records of any person covered by the provisions of this chapter.
6. The provisions of any agreement entered into under this section prevail over any conflicting rules adopted by the director or the commissioner.

**SECTION 8. AMENDMENT.** Section 57-43.2-37 of the North Dakota Century Code is amended and reenacted as follows:

**57-43.2-37. Cooperative special fuels agreements between states.**

1. The director may enter ~~into cooperative agreements with other states~~ for exchange of information and auditing of users of special fuels used in fleets of motor vehicles operated or intended to operate interstate or internationally. An agreement or amendment to an agreement is not effective until filed in writing with the director.
2. An agreement under this section may provide for determining the base ~~state~~ for users, users' records requirements, audit procedures, exchange of information, persons eligible for tax licensing, defining qualified motor vehicles, determining if bonding is required, specifying reporting requirements and periods including defining the uniform penalty and interest rates for late reporting, determining methods for collecting and forwarding of special fuel taxes and penalties to another jurisdiction, and other provisions as will facilitate the administration of the agreement.
3. The director may, as required by the terms of the agreement, forward ~~to officers of another state any~~ information in the director's or commissioner's possession relative to the manufacture, receipt, sale, use, transportation, or shipment of special fuels by any person. The director may disclose ~~to officers of another state~~ the location of officers, motor vehicles, and other real and personal property of users of special fuels.
4. An agreement may provide for ~~each state to audit the records of persons based in the state~~audits of users of special fuels used in fleets of motor vehicles operated or intended to operate interstate or internationally, to determine if the special fuel taxes due ~~each state~~ are properly reported and paid. ~~Each state shall forward the~~The findings of the audits performed on persons ~~based in the state, to each state in which the person has~~that have a taxable use of special fuels may be shared among parties to a cooperative agreement. For persons not based in this state and who have taxable use of special fuel in this state, the director or the commissioner may serve the audit findings ~~received from another state~~, in the form of an assessment, on the person as though an audit was conducted by the director or the commissioner.

5. Any agreement entered under this section does not preclude the director or the commissioner from auditing the records of any person covered by the provisions of this chapter.
6. The provisions of any agreement entered into under this section prevail over any conflicting rules adopted by the director or the commissioner.

Approved April 27, 2011  
Filed April 27, 2011

## CHAPTER 73

### SENATE BILL NO. 2145

(Senators J. Lee, Laffen, Uglem)  
(Representatives Delmore, Devlin, Kreidt)

AN ACT to amend and reenact section 5-02-01 of the North Dakota Century Code, relating to alcoholic beverage license exception for nonprofit organizations.

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

**SECTION 1. AMENDMENT.** Section 5-02-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **5-02-01. State and local retail license required - Penalty - Exception.**

1. Except as otherwise provided in section 5-02-01.1, any person engaging in the sale of alcoholic beverages at retail without first securing an appropriate license from the attorney general and a local license from the governing body of any city, or if ~~said~~the business is located outside the corporate limits of a city, the board of county commissioners or the governing body of an Indian tribe, as the location requires, is guilty of a class A misdemeanor.
2. This section does not apply to public carriers engaged in interstate commerce.
3. This section does not apply to a nonprofit organization that sells an alcoholic beverage as part of a fundraising activity. As used in this subsection, fundraising activity includes an auction, raffle, or other prize contest for which consideration is given. If the alcoholic beverage is sold as part of a fundraising event, the sale may not be for consumption at that event.

Approved April 26, 2011  
Filed April 26, 2011

# BANKS AND BANKING

## CHAPTER 74

### HOUSE BILL NO. 1131

(Industry, Business and Labor Committee)  
(At the request of the Department of Financial Institutions)

AN ACT to create and enact a new subsection to section 6-01-02 of the North Dakota Century Code, relating to the definition of market value; to amend and reenact subsection 2 of section 6-01-03, and sections 6-01-04.1 and 6-01-04.2, subsection 1 of section 6-01-04.3, and sections 6-06-06, 6-06-08.4, 6-06-10, 6-06-11, 6-06-14, and 6-06-36 of the North Dakota Century Code, relating to state credit union board member experience, clarification of regulated entities, civil money penalties, credit union board powers, prompt corrective actions relating to credit unions, use of electronic communications for credit union meetings, election or appointment of credit union committees, credit union supervision of loans, and credit union mergers; and to provide a penalty.

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

<sup>31</sup> **SECTION 1.** A new subsection to section 6-01-02 of the North Dakota Century Code is created and enacted as follows:

"Market value" means the highest price for which property can be sold in the open market by a willing seller to a willing purchaser, neither acting upon compulsion and both exercising reasonable judgment.

**SECTION 2. AMENDMENT.** Subsection 2 of section 6-01-03 of the North Dakota Century Code is amended and reenacted as follows:

2. The state credit union board consists of the commissioner and four members to be appointed by the governor. Two of the members of the state credit union board must have at least ~~three~~five years' experience as an officer, director, or committee member of a North Dakota state-chartered credit union, one member of the board must have had at least ~~three~~five years' experience as an officer, director, or committee member of a state-chartered or a federally chartered credit union, and one member of the board must be a laymember from the public at large. The term of office of appointed board members is five years. In case of a vacancy in the board, by death, resignation, or removal of an appointed member, the governor shall appoint an individual to fill the vacancy for the unexpired term. The commissioner chairs the board and the attorney general is, ex officio, the attorney for the board. The assistant commissioner shall serve as its secretary. The members of the state credit union board are entitled to receive the same remuneration as is provided for the members of the state banking board. The state credit union board shall hold meetings in March, June, September, and December of each year and

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<sup>31</sup> Section 6-01-02 was also amended by section 1 of Senate Bill No. 2096, chapter 76.

special meetings at the call of the commissioner in such places as the commissioner may designate within the state.

**SECTION 3. AMENDMENT.** Section 6-01-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**6-01-04.1. Removal of officers, directors, and employees of financial corporations or institutions.**

1. The department of financial institutions or the board may issue and serve, upon any current or former officer, director, or employee of a financial corporation ~~or, financial institution, or credit union~~ subject to its jurisdiction and upon a financial corporation ~~or, financial institution, or credit union~~ involved, a complaint order stating the basis for the board's or the department's belief that:
  - a. ~~That~~ the current or former officer, director, or employee is engaging, or has engaged, in any of the following conduct:
    - a- (1) Violating any law, regulation, board order, or written agreement with the board;
    - b- (2) Engaging or participating in any unsafe or unsound practice; ~~or,~~
    - e- (3) Performing any act of commission or omission or practice which is a breach of trust or a breach of fiduciary duty.
  - b. The term of the suspension or removal from employment and participation within the conduct of the affairs of a financial corporation, financial institution, or credit union.
2. The complaint order must contain a notice of opportunity for hearing pursuant to chapter 28-32. The date for the hearing must be set not less than thirty days after the date the complaint is served upon the current or former officer, director, or employee of a financial corporation ~~or, financial institution, or credit union~~. The current or former officer, director, or employee may waive the thirty-day notice requirement.
3. If no hearing is requested within twenty days of the date the complaint order is served upon the current or former officer, director, or employee, or if a hearing is held and the board finds that the record so warrants, and if the board finds that a financial corporation ~~or, financial institution, or credit union~~ has suffered or will probably suffer significant loss or other significant damage or that the interest of its depositors, shareholders, members, or creditors could be seriously prejudiced, it may enter ~~an~~ a final order suspending or removing the current or former officer, director, or employee. The current or former officer or employee may request a termination of the final order after a period of no less than three years.
4. A contested or default suspension or removal order is effective immediately upon service on the current or former officer, director, or employee and upon a financial corporation ~~or, financial institution, or credit union~~. A consent order is effective as agreed.
5. Any current or former officer, director, or employee suspended or removed from any position pursuant to this section is not eligible, while under

suspension or removal, to ~~occupy any position within~~ be employed or otherwise participate in the affairs of any financial corporation ~~or, financial institution in North Dakota, or credit union or any other entity licensed by the department of financial institutions~~ until the suspension or removal is terminated by the department of financial institutions or board.

6. When any current or former officer, director, employee, or other person participating in the conduct of the affairs of a financial corporation ~~or, financial institution, or credit union~~ is charged with a felony in state or federal court, involving dishonesty or breach of trust, the commissioner may immediately suspend the person from office or prohibit the person from any further participation in a financial corporation's ~~or, financial institution's, or credit union's~~ affairs. The order is effective immediately upon service of the order on a financial corporation ~~or, financial institution, or credit union~~ and the person charged, and remains in effect until the criminal charge is finally disposed of or until modified by the board. If a judgment of conviction, a federal pretrial diversion, or similar state order or judgment is entered, the board may order that the suspension or prohibition be made permanent. A finding of not guilty or other disposition of the charge does not preclude the commissioner or the board from pursuing administrative or civil remedies.

**SECTION 4. AMENDMENT.** Section 6-01-04.2 of the North Dakota Century Code is amended and reenacted as follows:

**6-01-04.2. Cease and desist orders.**

1. The department of financial institutions or the board may issue and serve upon a financial corporation ~~or, financial institution, or credit union~~ subject to its jurisdiction a complaint stating the factual basis for the department's or board's belief that the financial corporation ~~or, financial institution, or credit union~~ is engaging in any of the following conduct:
  - a. An unsafe or unsound practice.
  - b. A violation in the past or on a continuing basis of any law, regulation, board order, or written agreement entered into with the board.
2. The complaint must contain a notice of opportunity for hearing pursuant to chapter 28-32. The date for the hearing must be set not less than thirty days after the date the complaint is served upon the financial corporation ~~or, financial institution, or credit union~~. The financial corporation ~~or, financial institution, or credit union~~ may waive the thirty-day notice requirement.
3. If the financial corporation ~~or, financial institution, or credit union~~ fails to respond to the complaint within twenty days of its service, or if a hearing is held and the board concludes that the record so warrants, the board may enter an order directing the financial corporation ~~or, financial institution, or credit union~~ to cease and desist from engaging in the conduct which was the subject of the complaint and hearing and to take corrective action.
4. The commissioner or the board may enter an emergency, temporary cease and desist order if the commissioner or the board finds the conduct described in the complaint is likely to cause insolvency, substantial dissipation of assets, earnings, or capital of the financial corporation ~~or, financial institution, or credit union~~, or substantial prejudice to the depositors, shareholders, members, or creditors of the financial corporation ~~or, financial institution, or credit union~~. An

emergency, temporary cease and desist order is effective immediately upon service on the financial corporation ~~or, financial institution, or credit union~~ and remains in effect for no longer than sixty days or until the conclusion of permanent cease and desist proceedings pursuant to this section, whichever is sooner. An emergency, temporary cease and desist order may be issued without an opportunity for hearing. The financial corporation, financial institution, or credit union upon which such an order is served may apply to the district court of the county in which the financial corporation ~~or, financial institution, or credit union~~ is located for an order enjoining the operation of the emergency, temporary order. The application for injunction and procedure upon application must comply with the requirements of section 6-07-14.

**SECTION 5. AMENDMENT.** Subsection 1 of section 6-01-04.3 of the North Dakota Century Code is amended and reenacted as follows:

1. The commissioner or the board may assess a civil money penalty against a financial institution or financial corporation, including state-chartered banks, credit unions, trust companies, and savings and loan associations, or an officer, director, employee, agent, or person participating in the conduct of the affairs of the financial ~~institution or corporation,~~ financial institution, or credit union upon finding one or more of the following:
  - a. Failure to comply with a permanent or temporary cease and desist order that has been voluntarily consented to or issued pursuant to section 6-01-04.2;
  - b. Failure to comply with a final order that has been voluntarily consented to or issued following formal proceedings under chapter 28-32;
  - c. Payment of dividends in violation of section 6-03-36;
  - d. Loans and leases to one borrower or concern which exceed the limitations set forth in sections 6-03-59 and 6-03-59.1;
  - e. Loans to directors, officers, and employees in violation of section 6-03-60;
  - f. The intentional filing of inaccurate or misleading call reports required by section 6-03-70;
  - g. Violations of loan limitations under subsection 1 of section 6-06-12 or North Dakota Administrative Code section 13-03-16-03, 13-03-16-05, or 13-03-16-08;
  - h. Loans in violation of section 6-06-14 or subsection 2 of section 13-03-16-02 of the North Dakota Administrative Code or subsection 2 of section 13-03-16-05 of the North Dakota Administrative Code; or
  - i. Failure to file notice of change of control under section 6-08-08.1.

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

**6-06-06. Powers of credit unions.**

A credit union has the following powers:



1. To receive the savings of its members either as payment on shares or as deposits, including the right to conduct Christmas clubs, vacation clubs, and other such thrift organizations within its membership.
2. To make loans to members.
3. To make loans to a cooperative society or other organization having membership in the credit union.
4. To deposit its moneys in ~~state and national banks and financial institutions, trust companies and central credit unions, corporate central credit unions, and the Bank of North Dakota~~ authorized to receive deposits.
5. To invest in the following:
  - a. In bonds of the United States without limitation in securities issued as direct obligations by the United States government or any agency thereof and in any trust established for investing directly or collectively in such securities.
  - b. In bonds or evidences of debt of this state or in bonds of states of the United States.
  - c. In bonds or certificates of indebtedness of any county, city, or school district in this state, issued pursuant to authority of law, but not to exceed thirty percent of the assets of any credit union may be invested in such bonds or certificates of indebtedness.
  - d. In notes or bonds secured by mortgage or deed of trust upon unencumbered, improved real estate in this state, if such investment does not exceed sixty-five percent of the ~~actual cash~~ market value of the property mortgaged, and fire and tornado insurance policies are maintained and deposited as collateral to such mortgage, subject to such restriction and regulations as may be imposed by the state credit union board.
  - e. In notes or bonds secured by a security interest or lien upon unencumbered personal property, if the investment does not exceed ninety percent of the ~~actual cash~~ market value of the property secured.
  - f. In first lien, public utility, industrial, corporation, or association bonds, notes, or other evidences of debt issued by corporations located in the United States of America to the extent authorized by the state credit union board.
  - g. Subject to rules of the state credit union board, in shares of investment companies registered under the Investment Companies Act of 1940 and which invest only in investments otherwise permissible under this section.
  - h. In investments or insurance products otherwise prohibited by section 6-06-06 if the investments are directly related to a benefit plan for credit union employees.
6. To borrow money as limited in this chapter.

7. Subject to such regulations as the state credit union board may prescribe, insurance obtained under title 1 of the National Housing Act must be deemed adequate security.
8. To sue and be sued.
9. A credit union may invest in a credit union office building, including the lot, piece, or parcel of land on which the same is located, and in furniture and fixtures, to the extent authorized by regulations issued by the state credit union board.
10. Every state credit union has the power to purchase, hold, and convey other real estate as herein provided, and not otherwise:
  - a. Such as is mortgaged to it in good faith by way of security for loans, or for debts previously contracted.
  - b. Such as is conveyed to it in good faith in satisfaction of debts previously contracted in the course of its dealings.
  - c. Such as it purchases at sales under judgments, decrees, or mortgages held by the credit union, or purchases to secure debts due to it.

~~Upon~~Within sixty days of the transfer to other real estate owned, a current appraisal performed by an independent qualified appraiser must be obtained for all property recorded at or below the lower of twenty five thousand dollars or ten percent of the credit union's equity must be conducted by a state licensed individual who is independent of the transaction for all real estate recorded at or above one hundred thousand dollars or through a market evaluation performed by a qualified individual who is independent of the transaction for all real estate recorded below one hundred thousand dollars. Except as otherwise provided by chapter 10-06.1, a state credit union may hold possession of any real estate acquired after July 1, 1991, under mortgage, or title and possession of any real estate purchased to satisfy indebtedness, for a period not to exceed five years. Except as otherwise provided by chapter 10-06.1, real estate acquired before July 1, 1991, may be held for a period not exceeding five years from July 1, 1991. The commissioner may extend the real estate holding period up to an additional five years upon formal request by a credit union if the credit union has made a good-faith attempt to dispose of the real estate within the five-year period, or disposal within the five-year period would be detrimental to the credit union. Within thirty days after receipt of an adverse decision, the credit union may appeal that decision to the state credit union board.

11. Subject to authorization by the state credit union board, acting by order or rule, a state credit union has the same powers as a federal credit union and may engage in any activity in which a credit union could engage if the credit union were federally chartered.
12. To exercise any incidental power necessary or requisite to enable the credit union to carry out effectively the business for which it is incorporated or as determined by the board by order or rule.

**SECTION 7. AMENDMENT.** Section 6-06-08.4 of the North Dakota Century Code is amended and reenacted as follows:

#### 6-06-08.4. Prompt corrective action.

Whenever the state credit union board determines that any credit union under its supervision does not have adequate capital, the state credit union board, without a hearing, may declare that the credit union is either undercapitalized, significantly undercapitalized, or critically undercapitalized. For the purposes of this section, a credit union is undercapitalized if it either has a net worth ratio of less than six percent or fails to meet any applicable risk-based net worth requirement established by the board by rule. A credit union is significantly undercapitalized if it has a net worth ratio of less than four percent or has a net worth ratio of less than five percent and fails to submit an acceptable net worth restoration plan or materially fails to implement a plan accepted by the board. A credit union is critically undercapitalized if it has a net worth ratio of less than two percent or such higher net ratio, not exceeding three percent, as the board may specify. The board, by order, may require a credit union that is undercapitalized to annually set aside as net worth an amount equal to up to four tenths percent of its total assets. For purposes of this section, the net worth categories are defined as:

1. Well capitalized. A credit union with a net worth ratio of seven percent or greater which meets any applicable risk-based net worth requirement.
2. Adequately capitalized. A credit union with a net worth ratio six percent or more but less than seven percent which meets any applicable risk-based net worth requirement as defined by the state credit union board by rule.
3. Undercapitalized. A credit union with a net worth ratio of four percent or more but less than six percent or fails to meet any risk-based net worth requirement.
4. Significantly undercapitalized. A credit union with a net worth ratio of two percent or more but less than four percent, fails to increase its net worth, or fails to submit or materially implement a net worth restoration plan.
5. Critically undercapitalized. A credit union with a net worth ratio less than two percent.

A credit union may be reclassified into the next subordinate net worth category by the commissioner or the state credit union board if it is determined that the credit union is in an unsafe or unsound condition or has not corrected unsafe or unsound practices of which it was, or should have been, aware. The board or commissioner may require a credit union that is adequately capitalized, undercapitalized, significantly undercapitalized, or critically undercapitalized to increase its net worth. Additionally, the board or commissioner may require a credit union that is undercapitalized credit union, significantly undercapitalized, or critically undercapitalized to submit an acceptable net worth restoration plan to the board within the time allowed by the board commissioner. For a significantly undercapitalized credit union that has no reasonable prospect of becoming adequately capitalized or a critically undercapitalized credit union, the board may take possession of the credit union, appoint a conservator or liquidating agent for the credit union, or take such other action as the board determines would be appropriate to resolve the problems of the credit union.

A credit union that is the subject of such a board declaration may ask for a hearing before the board within five days after service upon it of the board's declaration. The application for a hearing must be granted and the hearing must be held not later than ten days after the application is filed. A complete record of the hearing must be established and maintained. On the basis of the hearing, the board

shall enter a final order. The institution may appeal the order to the district court of Burleigh County, within ten days after the order is served upon it. The appeal is governed by chapter 28-32.

**SECTION 8. AMENDMENT.** Section 6-06-10 of the North Dakota Century Code is amended and reenacted as follows:

**6-06-10. General and special meetings - Notice - Quorum - Voting privileges.**

General and special meetings may be held in the manner and for the purposes indicated in the bylaws of the credit union. Ten days before any regular or special meeting, written notice thereof must be mailed or sent by an electronic communication to each member and, in the case of a special meeting, the notice must state clearly the purpose of the meeting and what matters will be considered thereat. The members present at a general or special meeting constitute a quorum for the transaction of the business of the credit union. At all meetings, a member has but a single vote, whatever the member's shareholdings. There is no voting by proxy, but any firm, society, or corporation having a membership in the credit union may cast its vote by one person upon presentation by that person to the credit union of written authority from such firm, society, or corporation. The credit union may allow members to vote by mail ballot or electronic ballot for directors and committee members.

**SECTION 9. AMENDMENT.** Section 6-06-11 of the North Dakota Century Code is amended and reenacted as follows:

**6-06-11. Annual meetings - Election of directors - Election or appointment of committees.**

The organization meeting of the members of a credit union shall be the first annual meeting. At its annual meeting, its members shall elect a board of directors of not less than five members and a credit committee of not less than three members, unless the bylaws of the credit union provide that the credit union may not have a credit committee. A supervisory committee of not less than three members must be elected at the annual meeting, unless the bylaws of the credit union provide that the supervisory committee members be appointed by the board of directors of the credit union or the bylaws provide that the credit union may not have a supervisory committee. In the event the bylaws do not provide for a supervisory committee, then the duties and powers of a supervisory committee, as described in section 6-06-15, are the responsibility of the board of directors. The directors and committee members if any, shall hold office for such terms, respectively, as provided by the bylaws of the credit union and until their successors qualify. A record of the names and addresses of the officers and members of the board and committees must be filed with the commissioner within ten days after their election or appointment. Notice of any change in membership on the board or committees by appointment to fill an unexpired term or otherwise must be filed with the commissioner within ten days of such change.

If the bylaws of the credit union provide for a credit committee, then pursuant to the provisions of the bylaws, the board of directors may appoint or the members may elect a credit committee which consists of an odd number of members of the credit union, but which may not include more than one loan officer. The method used must be set forth in the bylaws.

If the credit committee is dispensed with in the bylaws, a credit manager, under the general supervision of the board of directors, may be empowered to approve or disapprove loans subject to the policies and conditions prescribed by the board of

directors. The president or other qualified senior management official may serve as the credit manager. If a credit manager is provided in lieu of ~~an elected~~ credit committee, the credit manager may appoint one or more loan officers with the power to approve or disapprove loans, and may establish an internal credit committee comprised of designated credit union staff with the power to approve or disapprove loans, subject to such limitations or conditions as the credit manager and board of directors prescribes.

**SECTION 10. AMENDMENT.** Section 6-06-14 of the North Dakota Century Code is amended and reenacted as follows:

**6-06-14. Loans - How made - Security - Meetings and duties of credit committee - Preferential loans.**

The credit committee has general supervision over all loans to members, ~~and unless the credit union does not have a credit committee, in which case the~~ general supervision of loans is the responsibility of the credit manager appointed by the board of directors. If the credit union has a credit committee, it shall meet as often as may be necessary to perform its duties and at least once each month, except the foregoing provisions regarding monthly meetings do not apply to any "corporate central" or "corporate" credit union. Notice must be given to each member of the committee before any meeting is held. All applications for a loan must be made on a form approved by the committee or credit manager and must set forth the purpose for which the loan is desired, the security, if any, which is offered, and such other data as the committee or credit manager may require. The maximum aggregate loans that may be made to a member or a group of members relying on a single income source without adequate security is subject to limits approved in loan policy by the board of directors of the credit union. Security under this section includes an assignment of shares or deposits, ~~an endorsement made on the note by a responsible person,~~ and such other security as the committee or credit manager in its discretion may deem adequate. No loan may be made unless it is approved by a majority of the entire committee or by the credit manager, except that the credit committee or credit manager may appoint and delegate to one or more loan officers the power to approve loans up to the limit established by the ~~credit committee~~ board of directors, or in excess of the limit if the excess is fully secured by unpledged shares. An individual may not disburse funds of the credit union for any loan that has been approved by that individual in that individual's capacity as a loan officer. Not more than one member of the credit committee may be appointed as a loan officer, unless the credit committee is made up of credit union employees appointed by the credit manager. Every loan by a credit union to, or guaranteed by, its directors, officers, managers, and committee members shall be current as outlined on the terms of the loan agreement and must be made on substantially the same terms, including interest rates, fee structure, and collateral, as those prevailing at the time for comparable transactions with other persons and ~~must~~ shall be in strict conformity with the credit union's policies, rules, and regulations.

**SECTION 11. AMENDMENT.** Section 6-06-36 of the North Dakota Century Code is amended and reenacted as follows:

**6-06-36. Merger.**

Any credit union chartered under this chapter or under Act of Congress may merge under rules and regulations established by the state credit union board. A federal credit union proposing to merge into a state-chartered credit union shall grant the commissioner discretionary authority to conduct an examination. The commissioner shall set fees for such examination at an hourly rate sufficient to cover

all reasonable expenses of the department of financial institutions associated with the examination. Fees must be collected by the commissioner, transferred to the state treasurer, and deposited in the financial institutions regulatory fund. The secretary of state shall charge a fee of fifty dollars for all services in connection with a merger authorized by the state credit union board, including filing of a certificate of organization or bylaws, and issuing or canceling charters.

Upon approval by the state credit union board of a merger application under this section, the former main office and facilities of the credit union merged will become branches of the continuing credit union and the continuing credit union is not required to file an application for any branches acquired in the merger transaction.

Approved March 28, 2011

Filed March 28, 2011

## CHAPTER 75

### SENATE BILL NO. 2104

(Industry, Business and Labor Committee)  
(At the request of the State Treasurer)

AN ACT to amend and reenact section 6-01-17 and subdivision a of subsection 1 of section 13-04.1-11 of the North Dakota Century Code, relating to a yearly assessment of banks and interstate branches and investigation and examination authority of money brokers; to provide an effective date; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 6-01-17 of the North Dakota Century Code is amended and reenacted as follows:

##### **6-01-17. Yearly assessment of banks and interstate branches.**

Every state banking association and banking institution under the jurisdiction and control of the commissioner and the commissioner's deputy examiners by this title, including the Bank of North Dakota and every branch of an out-of-state state bank, shall pay a yearly assessment. This assessment is to be determined by the state banking board as necessary to fund that portion of the department's budget relating to the regulation of state-chartered banks and branches of out-of-state state banks, including the authority to enter into cooperative fee sharing agreements and assessment of associated travel costs with other state bank supervisors. Assessment fees may not be computed on the combined assets of the bank and its trust department for those banks and branches exercising trust powers. Fees for the examination of the trust department must be computed in accordance with section 6-05-28. The assessment must be paid to the ~~state treasurer~~department of financial institutions within thirty days of each June thirtieth. Institutions and branches that have not been examined by the commissioner or the state banking board for three years prior to any assessment date shall not be required to pay the assessment. ~~The state treasurer shall report such payments of fees to the commissioner, and if~~ any such corporation or institution or branch is delinquent more than twenty days in making such payment, the board may make an order suspending the functions of such delinquent corporation, institution, or branch until payment of the amount due. The commissioner may assess a penalty of five dollars for each day that the assessment fee is delinquent. All fees and penalties under this section must be ~~paid~~deposited with the state treasurer and deposited in the financial institutions regulatory fund.

<sup>32</sup> **SECTION 2. AMENDMENT.** Subdivision a of subsection 1 of section 13-04.1-11 of the North Dakota Century Code is amended and reenacted as follows:

- a. May make such public or private investigation within or outside this state as it deems necessary to determine whether any person has violated or is about to violate any provision of this chapter or any rule or order

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<sup>32</sup> Section 13-04.1-11 was also amended by section 10 of Senate Bill No. 2124, chapter 105.

hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder. The licensee shall pay an investigation fee and must be charged by the department of financial institutions at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the visitation provided for by this section. Fees must be ~~paid to the state treasurer and~~ deposited in the financial institutions regulatory fund.

**SECTION 3. EFFECTIVE DATE.** This Act becomes effective June 1, 2011.

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

Approved April 26, 2011  
Filed April 26, 2011



## CHAPTER 76

### SENATE BILL NO. 2096

(Industry, Business and Labor Committee)  
(At the request of the Department of Financial Institutions)

AN ACT to amend and reenact section 6-01-02, subsection 4 of section 6-03-02, and sections 6-03-08, 6-03-13, and 6-03-59 of the North Dakota Century Code, relating to capital definitions, bank powers to elect employees, bank powers as to real estate, removal of banks to new locations, and loan limitations.

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

<sup>33</sup> **SECTION 1. AMENDMENT.** Section 6-01-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **6-01-02. Definitions.**

As used in this title, unless the context or subject matter otherwise requires:

1. "Association", "banking association", or "state banking association" means any corporation organized under the laws of this state covering state banking associations, and all corporations, limited liability companies, partnerships, firms, or associations whose business in whole or in part consists of the taking of money on deposit, except national banks, trust companies, and the Bank of North Dakota.
2. "Bank" means any national bank, national banking association, corporation, state bank, state banking association, or savings bank, whether organized under the laws of this state or of the United States, engaged in the business of banking.
3. "Bank holding company" means bank holding company as defined in 12 U.S.C. 1841(a)(1).
4. "Banking" means the business of receiving deposits, making loans, discounting commercial paper, issuing drafts, traveler's checks, and similar instruments, handling and making collections, cashing checks and drafts, and buying and selling exchange.
5. "Banking department" means the state department of financial institutions.
6. "Banking institution" means any bank, trust company, or bank and trust company organized under the laws of this state.
7. "Branch" means a place of business where deposits are received, checks paid, or money lent as a result of a bank that was merged into another bank pursuant to an interstate merger.

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<sup>33</sup> Section 6-01-02 was also amended by section 1 of House Bill No. 1131, chapter 74.

8. "Commissioner" means the commissioner of financial institutions.
9. "Corporate central credit union" means a credit union operated for the primary purpose of serving corporate accounts. A credit union is deemed to be a corporate central credit union when its total dollar amount of outstanding corporate loans plus corporate share and deposit holdings is equal to or greater than seventy-five percent of its outstanding loans plus share and deposit holdings.
10. "Credit union" means a cooperative, nonprofit association organized for the purposes of encouraging thrift among its members, creating a source of credit at a fair and reasonable rate of interest, and providing an opportunity for its members to improve their economic and social condition.
11. "Derivative transaction" means derivative transaction as defined in 12 U.S.C. 84(b)(3).
12. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- ~~42-13~~. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper that creates a record that may be retained, retrieved, and reviewed by a recipient of the communication and may be directly reproduced in paper form by the recipient through an automated process.
- ~~43-14~~. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
- ~~44-15~~. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and signed or adopted by a person with the intent to sign the record.
- ~~45-16~~. "Financial institution" means any bank, industrial loan company, or savings and loan association organized under the laws of this state or of the United States.
- ~~46-17~~. "Merger" or "merge" means the merging or consolidation of two or more banks including the purchase of all or substantially all of the assets and assumption of liabilities of a bank, facility, or branch.
- ~~47-18~~. "Mutual investment corporation" or "mutual savings corporation" means a corporation organized to engage in the investment or savings business, but having no capital stock or a nominal capital stock.
- ~~48-19~~. "National bank" or "national banking association" means an institution chartered by the comptroller of the currency under the National Bank Act [12 U.S.C. 24].
- ~~49-20~~. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- ~~20-21~~. "Tier 1, tier 2, and tier 3 capital" means those terms as set under title 12, Code of Federal Regulations, part 325, in effect on August 1, 20092011.

~~24-22.~~ "Trust company" means any corporation formed for the purpose of transacting business as an annuity, safe deposit, surety, or trust company.

**SECTION 2. AMENDMENT.** Subsection 4 of section 6-03-02 of the North Dakota Century Code is amended and reenacted as follows:

4. Elect or appoint directors, such board to consist of any number of members, not less than three nor more than twenty-five, a majority of whom must be residents of the state of North Dakota, and, by such board of directors, to appoint a president, who must be a member of said board, ~~a cashier~~, and such other employees as may be required, to define their duties, to require bonds of them and fix the penalty thereof, and to dismiss such officers and employees, or any of them, and appoint others to fill their places.

**SECTION 3. AMENDMENT.** Section 6-03-08 of the North Dakota Century Code is amended and reenacted as follows:

**6-03-08. Powers as to other real estate.**

Every state banking association has the power to purchase, hold, and convey other real estate as herein provided, and not otherwise:

1. Such as is mortgaged to it in good faith by way of security for loans or for debts previously contracted.
2. Such as is conveyed to it in good faith in satisfaction of debts previously contracted in the course of its dealings.
3. Such as it purchases at sales under judgments, decrees, or mortgages held by the association or purchases to secure debts due to it.

Upon transfer to other real estate owned, a current appraisal must be conducted by an individual who is independent of the transaction. Notwithstanding other sections of this chapter, a bank may apply to the commissioner for authority to exchange its interest in real property acquired in satisfaction of a debt previously contracted for an interest in an entity that would dispose of the real property. If the commissioner's decision with respect to an application is unfavorable, the applicant bank may appeal the decision to the state banking board by filing a notice of appeal with the commissioner within twenty business days after the commissioner has notified the applicant bank of the decision.

**SECTION 4. AMENDMENT.** Section 6-03-13 of the North Dakota Century Code is amended and reenacted as follows:

**6-03-13. Conversion to national bank - Sale of bank - Removal to new location.**

An association organized to do business in any city in this state, and which has sold or converted its business to a national bank or to any other banking association which is continued at the same place, may not use its charter to recommence business at another place without first obtaining the consent of the state banking board. When a banking association which has not so converted or sold its business is located at a place where there is not, or can reasonably project that there will not be, sufficient business for the profitable conduct of a bank, such association may apply to the state banking board for authority to remove its business to some other place within the state and to change its name if desired, and upon the approval of such

application, by the board and the proper amendment of the articles of incorporation, the board may issue authority for such removal and change. No such association, however, is permitted to remove its business to any city unless it has the full amount of capital stock and surplus required by this title for a new organization in such city. A banking association may apply to the state banking board for authority to move its main office to any location currently being operated by the banking association as a facility.

**SECTION 5. AMENDMENT.** Section 6-03-59 of the North Dakota Century Code is amended and reenacted as follows:

**6-03-59. Loan limitation to one borrower or concern.**

The total direct, indirect, or contingent liability of any borrower to any state banking association shall not exceed at any time twenty-five percent of the association's ~~common stock, surplus, and undivided profits~~ tier 1 capital as of the most recent report of condition and income. For the purpose of this section, the total liability of a borrower includes the liabilities of any separate borrowers for which the repayment of separate loans or extensions of credit is substantially from the same source and any credit exposure to a borrower arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between the state banking association and the borrower.

Approved April 26, 2011

Filed April 26, 2011

## CHAPTER 77

### SENATE BILL NO. 2158

(Senators Krebsbach, Olafson, Larsen)  
(Representatives Keiser, N. Johnson, Kingsbury)

AN ACT to amend and reenact subsections 2, 4, and 5 of section 6-08-16 and subsections 4, 5, and 6 of section 6-08-16.2 of the North Dakota Century Code, relating to issuing a check with nonsufficient funds or without an account; and to provide a penalty.

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

<sup>34</sup> **SECTION 1. AMENDMENT.** Subsections 2, 4, and 5 of section 6-08-16 of the North Dakota Century Code are amended and reenacted as follows:

2. The grade of an offense under this section may be determined by individual or aggregate totals of insufficient funds checks, drafts, electronic funds transfer authorizations, or orders.
  - a. The person is also liable for collection fees or costs, not in excess of ~~thirty~~thirty-five dollars, which are recoverable by the holder, or its agent or representative, of the check, draft, electronic funds transfer authorization, or order. If the holder of the check, draft, electronic funds transfer authorization, or order or the holder's agent or representative uses the automated clearinghouse network to collect the collection fees or costs, that person shall comply with the network's rules and requirements. If the state's attorney or holder determines the person identified as the issuer of the instrument did not make, draw, utter, or deliver the instrument in violation of this section but instead is the victim of fraud, that state's attorney or holder shall provide the holder or its agent or representative written notice of the fraud and upon receipt of the notice that holder or its agent or representative may not collect fees or costs under this subdivision.
  - b. A collection agency shall reimburse the original holder of the check, draft, electronic funds transfer authorization, or order any additional charges assessed by the depository bank of the check, draft, electronic funds transfer authorization, or order not in excess of two dollars if recovered by the collection agency.
  - c. If the person does not pay the instrument in full and any collection fees or costs not in excess of ~~thirty~~thirty-five dollars within ten days from receipt of the notice of dishonor provided for in subsection 4, a civil penalty is also recoverable by civil action by the holder, or its agent or representative, of the check, draft, electronic funds transfer authorization, or order. The civil penalty consists of payment to the holder, or its agent or representative, of the instrument of the lesser of two hundred dollars or three times the amount of the instrument.

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<sup>34</sup> Section 6-08-16 was also amended by section 1 of House Bill No. 1080, chapter 106.

- d. The court may order an individual convicted under this section to undergo an evaluation by a licensed gaming, alcohol, or drug addiction counselor.
4. A notice of dishonor may be mailed by the holder, or the holder's agent or representative, of the check upon dishonor. Proof of mailing may be made by return receipt or by an affidavit of mailing signed by the individual making the mailing. The notice must be in substantially the following form:

Notice of Dishonored Check

Date \_\_\_\_\_  
 Name of Issuer \_\_\_\_\_  
 Street Address \_\_\_\_\_  
 City and State \_\_\_\_\_

You are according to law notified that a check dated \_\_\_\_\_,  
 \_\_\_\_\_, drawn on the \_\_\_\_\_ Bank  
 of \_\_\_\_\_ in the amount of \_\_\_\_\_ has been returned  
 unpaid with the notation the payment has been refused because of  
 nonsufficient funds. Within ten days from the receipt of this  
 notice, you must pay or tender to \_\_\_\_\_  
 (Holder or agent or representative)  
 sufficient moneys to pay such instrument in full and any collection  
 fees or costs not in excess of ~~thirty~~thirty-five dollars.

The notice of dishonor also may contain a recital of the penal provisions of this section and the possibility of a civil action to recover any collection fees or costs or civil penalty authorized by this section.

5. An agent acting for the receiver of a check in violation of this section may present the check to the state's attorney for prosecution if the holder, or the holder's agent or representative, mailed a notice under subsection 4. During the first one hundred twenty days after the drawer received notice under this subsection the state's attorney shall accept the instrument presented by the agent. The criminal complaint for the offense of issuing a check, draft, electronic funds transfer authorization, or order without sufficient funds under this section must be executed within not more than ~~ninetyone~~thirtythree hundred twenty days after the dishonor by the drawee of said instrument for nonsufficient funds. The failure to execute a complaint within said time bars the criminal charge under this section.

**SECTION 2. AMENDMENT.** Subsections 4, 5, and 6 of section 6-08-16.2 of the North Dakota Century Code are amended and reenacted as follows:

4. A person who issues an instrument under subsection 2 or 3 also is liable for collection fees or costs, not in excess of ~~thirty~~thirty-five dollars per instrument, which are recoverable by the holder of the instrument, or the holder's agent or representative. If the state's attorney or holder determines the person identified as the issuer of the instrument did not issue the instrument in violation of this section but instead is the victim of fraud, that state's attorney or holder shall provide the holder or its agent or representative written notice of the fraud and upon receipt of the notice that holder or its agent or representative may not collect fees or costs under this subsection. A civil penalty is also recoverable by civil action by the holder, or its agent or representative, of the instrument. The civil penalty consists of payment to the holder of the instrument of the lesser of two hundred dollars or three times the amount of the instrument.

- 5. An agent acting for the receiver of an instrument issued in violation of this section may present the instrument to the state's attorney for prosecution if the holder, or the holder's agent or representative, mailed a notice under subsection 6. During the first one hundred twenty days after the drawer received notice under this subsection the state's attorney shall accept the instrument presented by the agent. A criminal complaint for violating this section must be executed within ~~ninety~~ one hundred twenty days after the drawer receives notice from the holder, or its agent or representative, of a no-account or closed-account instrument.
  
- 6. A notice of dishonor may be mailed by the holder, or the holder's agent or representative, of the instrument upon dishonor. Proof of mailing may be made by return receipt or by an affidavit of mailing signed by the individual making the mailing. The notice must be in substantially the following form:

Notice of Dishonored Instrument

Date \_\_\_\_\_  
 Name of Issuer \_\_\_\_\_  
 Street Address \_\_\_\_\_  
 City and State \_\_\_\_\_

You are according to law notified that an instrument dated \_\_\_\_\_, \_\_\_\_\_, drawn on the \_\_\_\_\_ Bank of \_\_\_\_\_ in the amount of \_\_\_\_\_ has been returned unpaid with the notation the payment has been refused because (of nonsufficient funds) (the drawer does not have an account). Within ten days from the receipt of this notice, you must pay or tender to \_\_\_\_\_ (Holder or agent or representative) sufficient moneys to pay such instrument in full and any collection fees or costs not in excess of ~~thirty~~ thirty-five dollars.

The notice may also contain a recital of the penal provisions of this section and the possibility of a civil action to recover any collection fees or costs authorized by this section.

Approved April 26, 2011  
Filed April 26, 2011

## CHAPTER 78

### SENATE BILL NO. 2081

(Agriculture Committee)  
(At the request of the Bank of North Dakota)

AN ACT to amend and reenact subsection 5 of section 6-09-15.5 and subsection 2 of section 6-09.11-06 of the North Dakota Century Code, relating to the term of loans for beginning farmers and the family farm loan program.

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

**SECTION 1. AMENDMENT.** Subsection 5 of section 6-09-15.5 of the North Dakota Century Code is amended and reenacted as follows:

5. The maximum term of a real estate loan is ~~twenty-five~~thirty years. The maximum term of a farm equipment or livestock loan is seven years.

**SECTION 2. AMENDMENT.** Subsection 2 of section 6-09.11-06 of the North Dakota Century Code is amended and reenacted as follows:

2. Except as otherwise provided:
  - a. A loan under this chapter must be repayable in installments and may have a term up to ~~twenty~~thirty years.
  - b. All or part of a loan under this chapter may be repaid at any time, subject to conditions set forth in the mortgage.

Approved April 25, 2011  
Filed April 25, 2011



## CHAPTER 79

### SENATE BILL NO. 2078

(Industry, Business and Labor Committee)  
(At the request of the Bank of North Dakota)

AN ACT to create and enact a new section to chapter 6-09 of the North Dakota Century Code, relating to residential mortgages originated by the Bank of North Dakota; 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>35</sup> **SECTION 1.** A new section to chapter 6-09 of the North Dakota Century Code is created and enacted as follows:

#### **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 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. The Bank originate no more than eight million dollars in conventional rural residential mortgages;
  - b. An applicant must be referred to the Bank by a local financial institution and the Bank may not have received from any other local financial institution an objection to the Bank's program;
  - c. The loan application must be for an owner-occupied primary residence;
  - d. The Bank provide all regulatory disclosures, process and underwrite the loan, prepare closing documents, and disburse the loan; and
  - e. The terms of the loan originated by the Bank must provide:
    - (1) The amount of the loan may not exceed two hundred thousand dollars;
    - (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;

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<sup>35</sup> Section 6-09-44 was also created by section 1 of Senate Bill No. 2150, chapter 147.

(4) The maximum loan to value may not exceed eighty percent of appraised value; however, a local financial institution 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.

**SECTION 2. EFFECTIVE DATE.** This Act becomes effective July 1, 2011.

**SECTION 3. EXPIRATION DATE.** This Act is effective through July 31, 2013, and after that date is ineffective.

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

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 80

### HOUSE BILL NO. 1428

(Representatives Monson, Damschen)  
(Senator Olafson)

AN ACT to amend and reenact section 6-09.4-23 of the North Dakota Century Code, relating to authority to withhold school district state aid.

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

**SECTION 1. AMENDMENT.** Section 6-09.4-23 of the North Dakota Century Code is amended and reenacted as follows:

#### **6-09.4-23. Evidences of indebtedness - Authority to withhold school district state aid.**

1. If the public finance authority or a paying agent notifies the superintendent of public instruction, in writing, that a school district has failed to pay when due the principal or interest on any evidences of indebtedness issued after July 31, 1999, or that the public finance authority, school district, or the paying agent has reason to believe a school district will not be able to make a full payment of the principal and interest when the payment is due, the superintendent of public instruction shall withhold any funds that are due or payable or appropriated to the school district under chapter 15.1-27 until the payment of the principal or interest has been made to the public finance authority or the paying agent, or until the public finance authority, school district, or the paying agent notifies the superintendent of public instruction that arrangements satisfactory to the public finance authority or the paying agent have been made for the payment of the principal and interest then due and owing. The notification must include information required by the superintendent of public instruction. State funds available to a school district under chapter 15.1-27 are not subject to withholding under this section unless the withholding is authorized by resolution of the district's school board.
2. Notwithstanding any withholding of state funds under section 15-39.1-23 or any other law, the superintendent of public instruction shall make available any funds withheld under subsection 1 to the public finance authority or the paying agent. The public finance authority or the paying agent shall apply the funds to payments that the school district is required to make to the public finance authority or the paying agent.
3. If funds are withheld from a school district and made available to the public finance authority or a paying agent under this section and if tax revenues are received by the school district during the fiscal year in which the funds are withheld and are deposited in the district's sinking fund established in accordance with section 21-03-42, the district, with the consent of the public finance authority or the paying agent, may withdraw from its sinking fund an amount equal to that withheld by the superintendent of public instruction and made available to the public finance authority or a paying agent under this section.

4. Any excess funds at the Bank of North Dakota escrowed pursuant to an agreement between the public finance authority and the state board of public school education for the benefit of the public finance authority and a school district must be held by the Bank. With the approval of the superintendent of public instruction, those funds may be used to subsidize the debt service payments on construction loans that are made to school districts by the public finance authority and which are subject to the withholding provisions of this section or construction loans made to school districts under the state school construction program established by section 11 of chapter 2 of the 1989 Session Laws. Notwithstanding the existence of an escrow agreement between the public finance authority and the state board of public school education, those funds must be transferred to the public finance authority upon certification by the public finance authority that the funds are in excess of the amount needed to provide for the payment in full of the outstanding principal and interest, when due, on the public finance authority bonds issued to purchase the municipal securities for which the escrow fund was established.
  
5. The superintendent of public instruction shall develop detailed procedures for school districts to notify the superintendent of public instruction that they have obligated themselves to be bound by the provisions of this section; procedures for school districts, paying agents, and the public finance authority to notify the superintendent of public instruction of potential defaults and to request payment under this section; and procedures for the state to expedite payments to prevent defaults.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 81

### SENATE BILL NO. 2121

(Human Services Committee)  
(At the request of the Bank of North Dakota)

AN ACT to repeal chapter 6-09.6 of the North Dakota Century Code, relating to the developmentally disabled facility loan program; and to provide for the sale of loans and transfer of proceeds to the common schools trust fund.

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

**SECTION 1. REPEAL.** Chapter 6-09.6 of the North Dakota Century Code is repealed.

**SECTION 2. DEVELOPMENTALLY DISABLED FACILITY REVOLVING LOAN FUND - AUTHORITY TO SELL LOANS - TRANSFERS.** The executive director of the department of human services shall sell such loans in the developmentally disabled facility revolving loan fund created under section 6-09.6-01.2 to the Bank of North Dakota which shall provide \$1,293,211, or so much of the sum as may be necessary, with the proceeds to be deposited in the common schools trust fund.

Approved April 19, 2011  
Filed April 19, 2011

## CHAPTER 82

### SENATE BILL NO. 2306

(Senators Wanzek, Erbele, Grindberg)  
(Representatives Brandenburg, Headland, Pollert)

AN ACT to amend and reenact sections 6-09.7-02, 6-09.7-03, and 6-09.7-05 of the North Dakota Century Code, relating to the fuel production facility loan guarantee program; to repeal section 6-09.7-08 of the North Dakota Century Code, relating to state funding limitations for recipients of fuel production facility loan guarantees; and to provide an expiration date.

#### 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:

1. Guarantee the loan of money by eligible banks, credit unions, and savings and loan associations, upon such terms, conditions, and procedures as it may establish in accordance with the provisions of this chapter, to any qualified person to assist that person in constructing an agriculturally derived fuel production ~~facilities of a size to serve the community in or near which the facility is located~~facility. The facility must use ~~grain-related and biomass farm products~~ for agriculturally derived fuel production.
2. Take, hold, and administer, on behalf of the state from any source, any property, or any interest ~~therein~~in the property, and the income therefrom, either absolutely or in trust, for any purpose of the 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~~the Bank under this chapter.
3. Adopt standards governing the qualifications and financial needs of applicants, ~~and~~; establish a method of application for the guaranteeing of loans ~~which that~~ may be made by banks, credit unions, farm credit associations, and savings and loan associations; and adopt any other standards ~~as may be necessary to administer properly~~ this chapter.

**SECTION 2. AMENDMENT.** Section 6-09.7-03 of the North Dakota Century Code is amended and reenacted as follows:

##### **6-09.7-03. Extent of loan guarantee.**

The extent of the loan guarantee under this chapter may not exceed twenty-five percent of the total loan. The maximum dollar amount of any guarantee on a single loan may not exceed ~~twelve~~ million five hundred thousand dollars. The extent of the value of all loan guarantees under this chapter may not, at any one time, exceed ~~ten~~twenty-five million dollars.

<sup>36</sup> **SECTION 3. 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 lands and minerals trust.**

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 guarantee reserve fund must be maintained~~ Bank may request the director of the office of management and budget to transfer funds from the lands and minerals trust created by section 15-08.1-08 and any moneys transferred from the lands and minerals trust to maintain ~~the~~ to maintain twenty-five percent of the guarantee reserve fund balance. ~~Transfers from the lands and minerals trust may not exceed a total of six million two hundred fifty thousand 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 shall be deposited in the reserve fund. The amount of reserves for all guaranteed loans must be determined by a formula which will assure, as determined by the Bank, an adequate amount of reserve.

**SECTION 4. REPEAL.** Section 6-09.7-08 of the North Dakota Century Code is repealed.

**SECTION 5. EXPIRATION DATE.** This Act is effective through July 31, 2013, and after that date is ineffective.

Approved April 20, 2011  
Filed April 20, 2011

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<sup>36</sup> Section 6-09.7-05 was also amended by section 4 of House Bill No. 1451, chapter 483.

## CHAPTER 83

### HOUSE BILL NO. 1462

(Representatives Froseth, Anderson, Conklin, Onstad)  
(Senators Wanzek, Triplett)

AN ACT to create and enact a new section to chapter 6-09.10 of the North Dakota Century Code, relating to compensation for members of the credit review board; to amend and reenact sections 4-24-13, 6-08.1-02, 6-08.1-03, 6-09.10-01, 6-09.10-02, 6-09.10-02.1, 6-09.10-03, 6-09.10-04, 6-09.10-04.1, 6-09.10-06, 6-09.10-10, 6-09.10-11, and 6-09.11-04 of the North Dakota Century Code, relating to the agricultural mediation service; to repeal sections 6-09.10-05, 6-09.10-07, 6-09.10-08, and 6-09.11-10 of the North Dakota Century Code, relating to the home-quarter fund; and to provide an appropriation.

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

**SECTION 1. AMENDMENT.** Section 4-24-13 of the North Dakota Century Code is amended and reenacted as follows:

#### **4-24-13. Genetically modified seed - Patent infringement - Sampling - Mediation.**

1. For purposes of this section, farmer means the person responsible for planting a crop on, managing the crop, and harvesting the crop from land on which a patent infringement is alleged to have occurred.
2. a. Before a person holding a patent on a genetically modified seed may enter upon any land farmed by another for the purpose of obtaining crop samples to determine whether patent infringement has occurred, the person holding the patent:
  - (1) Shall notify the agriculture commissioner in writing of the person's belief that a patent infringement has occurred and include facts from the allegation;
  - (2) Shall notify the farmer in writing of the allegation that a patent infringement has occurred and request written permission to enter upon the farmer's land; and
  - (3) Must obtain the written permission of the farmer.
- b. If the farmer withholds written permission, the person holding a patent may petition the state district court for an order granting permission to enter upon the farmer's land.
3. The farmer may accompany the person holding the patent at the time any samples are taken.
4. If requested by the farmer or the person holding the patent, the state seed commissioner shall accompany the person holding the patent at the time any sample is taken. The state seed commissioner may impose a fee for providing



that service. The patent holder and the farmer shall each pay one-half of the fee charged by the commissioner.

5. If the person holding a patent believes that the crop from which samples are to be taken may be subject to intentional damage or destruction, the person may seek a protection order from the state district court. The protection order may not interrupt or interfere with normal farming practices, including harvest and tillage.
6. The person holding the patent may take samples from a standing crop, from representative standing plants in the field, or from crops remaining in the field after harvest.
7. The person holding the patent may obtain no more samples than those reasonably necessary to make a determination regarding patent infringement. An equal number of samples must remain in the custody of the state seed commissioner or the farmer for future comparison and verification purposes. All samples taken must be placed in containers, labeled as to the date, time, and location from which they were taken, and the labels must be signed by the farmer, the person who took the samples, and the state seed commissioner if the commissioner was present at the time the samples were taken. The patent holder and the farmer shall share equally the cost of the containers needed for the second set of samples which are retained by the state seed commissioner or the farmer. The farmer and the person holding the patent shall share equally the cost of the containers and the cost of obtaining the samples.
8. Within sixty days from the date the samples are taken, an independent laboratory shall conduct all tests to determine whether patent infringement has occurred. The person holding the patent shall notify the farmer of the test results, by certified mail or by any other method of delivery for which a signature is required, within twenty-one days from the date the results were reported to the person holding the patent.
9. The parties may participate in mediation at any time. The mediation must be conducted by a mediator jointly selected by the farmer and the person holding the patent. If the farmer and the person holding the patent are unable to select a mediator, the mediation must be conducted by an independent agricultural mediation service.
10. If the case is not settled after mediation, either party may file a claim for relief with the federal district court having jurisdiction over the claim. Unless otherwise specified in a contract between the farmer and the person holding the patent, the appropriate state district court is the one that has jurisdiction over that portion of this state in which the farmer's land is located.

**SECTION 2. AMENDMENT.** Section 6-08.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**6-08.1-02. Exemptions.**

This chapter does not apply to any of the following:

1. The disclosure of necessary customer information in the preparation, examination, handling, or maintenance of any customer information by any officer, employee, or agent of a financial institution having custody of such

- information or in the examination of such necessary information by an accountant engaged by the financial institution to perform an audit.
2. The disclosure of necessary customer information in the examination of any customer information by or the furnishing of customer information to any officer, employee, or agent of a financial institution regulatory agency solely for use in the exercise of that person's duties.
  3. The publication of data derived from customer information if the data cannot be identified to any particular customer or account.
  4. Any acts required of the financial institution by the Internal Revenue Code.
  5. Disclosures permitted under the Uniform Commercial Code concerning the dishonor of any negotiable instrument.
  6. The exchange in the regular course of business of necessary customer credit information between a financial institution and other financial institutions or commercial entities, directly or through a customer reporting agency.
  7. The release by the industrial commission, in its capacity as the managing body of the Bank of North Dakota, of the following:
    - a. The name of any person who has obtained approval for direct or indirect financing or security, including a loan guarantee or a letter of credit, through the Bank of North Dakota primarily for purposes other than personal, family, or household purposes.
    - b. The amount of any financing or security referenced in subdivision a.
    - c. The amount of any net writeoff or loan forgiveness associated with the financing or security referenced in subdivision a which the industrial commission determines is uncollectible.
    - d. The program under which any financing or security referenced in subdivision a was made.
    - e. Recipient reports and grantor reports as required under chapter 54-60.1.
  8. The disclosure of customer information in the examination, handling, or maintenance of any customer information by any governmental agency or law enforcement agency for purposes of verifying information necessary in the licensing process, provided prior consent is obtained from the licensee and customer.
  9. Disclosure of customer information to a law enforcement agency or governmental agency pursuant to a search warrant or subpoena duces tecum issued in accordance with applicable statutes or the North Dakota Rules of Criminal Procedure.
  10. Disclosure by a financial institution to the agriculture commissioner that it has given a customer notice of the availability of the North Dakota ~~agricultural~~ mediation service.

11. The disclosure by a financial institution to any financial institution or other entity that controls, is controlled by, or is under common control with the financial institution if the financial institution or other entity receiving the information complies with section 6-08.1-03.
12. A disclosure of customer information under section 502(e) of the federal Financial Services Modernization Act of 1999 [Pub. L. 106-102; 113 Stat. 1436; 15 U.S.C. 6802(e)]. A disclosure under this subsection must comply with the rules adopted under section 6-08.1-10.
13. A disclosure made to the disciplinary board of the North Dakota supreme court or another state's authority with responsibility for enforcing rules of professional conduct for lawyers regarding dishonor of an instrument issued against any trust account maintained by an attorney or law firm, as these terms are defined in section 6-08-16.2.

**SECTION 3. 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 any person, governmental agency, or law enforcement agency unless the disclosure is made in accordance with any of the following:

1. Pursuant to consent granted by the customer in accordance with this 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 ~~agricultural~~ 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 a disabled adult or vulnerable elderly adult as defined by section 12.1-31-07. Nothing in this subsection may be construed to impose upon a financial institution a duty to investigate an alleged or suspected exploitation of a disabled adult or vulnerable elderly adult or to make any report to a governmental agency or law enforcement agency.

**SECTION 4. AMENDMENT.** Section 6-09.10-01 of the North Dakota Century Code is amended and reenacted as follows:

**6-09.10-01. Definitions.**

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

1. "Board" means the credit review board, or its authorized agent when applicable.
2. "Farmer" means a person who is or was involved in the production of an agricultural commodity or livestock.
3. "Fund" means the home quarter purchase fund.
4. "Home quarter" means a single contiguous tract of not more than one hundred sixty acres [64.75 hectares] which serves as the base unit of a farm and upon which the farm residence and buildings are located.
5. "Person" means an individual, corporation, limited liability company, partnership, or other legal entity.

**SECTION 5. AMENDMENT.** Section 6-09.10-02 of the North Dakota Century Code is amended and reenacted as follows:

**6-09.10-02. Credit review board.**

1. The board consists of ~~six members. The governor, the attorney general, and the agriculture commissioner shall each appoint two members to the board. The governor and attorney general shall each appoint one member with:~~
  - a. One individual who has experience as a director or officer of a financial institution and one member, appointed by the governor;
  - b. One individual who has experience as a director or officer of a financial institution, appointed by the attorney general;
  - c. One individual actively engaged in farming in the state. ~~The agriculture commissioner shall appoint two members who are, appointed by the governor;~~
  - d. One individual actively engaged in farming in the state, appointed by the attorney general; and
  - e. Two individuals actively engaged in farming in the state. ~~No member of the board may hold state office or serve in state office or serve in state government in any capacity at any time of appointment or during service on the board, appointed by the agriculture commissioner.~~
2. A board member may not be an employee or official of the state during the member's term of office.
3. The credit review term of office for members of the board members shall serve terms of ~~is~~ two years. An individual may serve consecutive terms.
4.
  - a. Annually, the board shall elect one member to serve as the chairman.
  - b. The chairman shall call all meetings of the board.

**SECTION 6. AMENDMENT.** Section 6-09.10-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**6-09.10-02.1. Additional duties of board.**

In addition to other powers and duties enumerated in this chapter, the board shall:

1. Establish policy for the North Dakota agricultural mediation service.
2. Recommend policies and procedures to the industrial commission regarding farm loan programs of the Bank of North Dakota.

**SECTION 7. AMENDMENT.** Section 6-09.10-03 of the North Dakota Century Code is amended and reenacted as follows:

**6-09.10-03. North Dakota agricultural mediation service - Powers — Compensation and expenses Establishment - Administration - Fees.**

~~The board shall meet at the call of the chair, as is necessary to fulfill its duties under this chapter. The agriculture commissioner shall administer the agricultural mediation service.~~

1. ~~The agriculture commissioner shall establish an agricultural and administer a mediation service to disseminate information to farmers concerning farm credit problems and to provide assistance to seek to resolve farm credit problems.~~
2. ~~The commissioner shall appoint an the administrator of the agricultural mediation service. The commissioner and shall hire staff, negotiators, and mediators who may mediate disputes involving farmers or other persons eligible for mediation with an agency of the United States department of agriculture, and other necessary personnel.~~
3. ~~The board may charge the farmer and others a reasonable fee for any assistance, provided the fees are used to continue the service. Fees charged to mediation participants are limited to establish the fees to be paid by those using the North Dakota mediation service. The fees, which must be used to support continuation of the service, may not exceed twenty-five dollars per hour, each, for the time spent in mediation sessions.~~
4. ~~The board shall adopt policies governing the North Dakota mediation service's negotiators, staff, and mediators hired under this section. Board members are entitled to receive one hundred thirty five dollars for each day of official service, as directed by the board. The board members are entitled to expenses as provided in sections 44-08-04 and 54-06-09. The expenses provided under this section may be paid from any funds available in the home quarter purchase fund, and other personnel, as well as the nature and scope of all mediation efforts.~~

**SECTION 8.** A new section to chapter 6-09.10 of the North Dakota Century Code is created and enacted as follows:

**Board compensation.**

Each member of the board is entitled to receive compensation in the amount of one hundred thirty-five dollars per day plus reimbursement for expenses as provided

by law for state officers if the member is attending meetings or performing duties directed by the board.

**SECTION 9. AMENDMENT.** Section 6-09.10-04 of the North Dakota Century Code is amended and reenacted as follows:

**6-09.10-04. Request for assistance - Negotiation - Mediation.**

~~Any~~A farmer, creditor, person dealing with a farmer, ~~or other person eligible for mediation with an agency of the United States department of agriculture, a landowner, or an owner, lessee, or lessor of mineral interests~~ may request assistance from the ~~administrator~~North Dakota mediation service. Upon receipt of the request, and upon consent of all parties to mediation, the ~~negotiator or mediator shall encourage and~~administrator of the North Dakota mediation service may assign a negotiator or mediator to assist the parties in reaching a voluntary settlement.

**SECTION 10. AMENDMENT.** Section 6-09.10-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**6-09.10-04.1. Liability.**

The board, commissioner, administrator, ~~staff,~~ negotiators, ~~and mediators, and other personnel~~ are not subject to any liability arising from any actions ~~undertaken~~ regarding a farmer, creditor, or other person ~~or omissions~~ in attempting to reach a settlement.

**SECTION 11. AMENDMENT.** Section 6-09.10-06 of the North Dakota Century Code is amended and reenacted as follows:

**6-09.10-06. Fund - Appropriation.**

1. ~~A revolving fund must be maintained at the Bank of North Dakota for the subsidy of interest rates on home quarter purchases and coordination and operation of a farm management delivery system as provided in this chapter. All moneys transferred into the fund, interest upon moneys in the fund, and payments to the fund are hereby~~On July 1, 2011, the state treasurer shall transfer any moneys remaining in the home-quarter fund to the agriculture commissioner.

2. ~~Any moneys transferred, as required by subsection 1, are appropriated to the agriculture commissioner, for the purposes of this chapter. Any moneys generated by the farm management delivery system must be transferred to the state board for career and technical education and allocated by the state board for career and technical education to the adult farm management program, the agricultural mediation services, and North Dakota state university for expenses related to the jointly developed and implemented farm management delivery system.~~

2-3. ~~The board~~If it appears to the board that the moneys appropriated to the agriculture commissioner for the North Dakota mediation service are insufficient, the agriculture commissioner may petition the emergency commission for a transfer from the state contingency fund whenever it appears to the board that the moneys remaining in the fund are not sufficient to meet demands on the fund. The emergency commission may grant the transfer request, or so much thereof of the request as may be necessary, if it

finds that an emergency situation exists in the industry of farming, due to increasing numbers of farm foreclosures requests for mediation.

3. ~~The board and the Bank of North Dakota shall enter into an agreement through which the Bank shall supervise and monitor the payment and repayment of interest subsidies approved by the board.~~

**SECTION 12. AMENDMENT.** Section 6-09.10-10 of the North Dakota Century Code is amended and reenacted as follows:

**6-09.10-10. Mediation - Open records and meetings exception.**

Information created, collected, and maintained by the ~~agricultural~~North Dakota mediation service in the course of any formal or informal mediation is confidential and ~~is~~ not subject to the open records requirements of section 44-04-18. ~~Such~~The information may be released only upon the written consent of all parties to the mediation or pursuant to an order issued by the court upon a showing of good cause. All mediation meetings and meetings involving the board, ~~staff,~~ negotiators, ~~or~~ mediators ~~wherein the finances of specific farmers, creditors, and others are discussed or other personnel,~~ are confidential, closed meetings and are not subject to the open meetings requirements of section 44-04-19, if the finances of specific farmers, creditors, or others are discussed.

**SECTION 13. AMENDMENT.** Section 6-09.10-11 of the North Dakota Century Code is amended and reenacted as follows:

**6-09.10-11. Agriculture commissioner - Authorization to receive and expend moneys.**

The agriculture commissioner ~~is authorized to may~~ receive and expend any ~~federal, private, or other funds~~public or nonpublic moneys that become available for the purpose of defraying the expenses of the ~~agricultural~~North Dakota mediation service.

**SECTION 14. AMENDMENT.** Section 6-09.11-04 of the North Dakota Century Code is amended and reenacted as follows:

**6-09.11-04. Loans to farmers - Purposes.**

The following purposes are eligible to be funded by bond proceeds or loan participations under this chapter:

1. Purchasing agricultural real estate-;
2. Constructing, repairing, altering, or adding to any farm buildings on agricultural real estate owned or purchased by the farmer-;
3. Making permanent improvements to agricultural real estate owned or purchased by the farmer for the purpose of increasing the productive value of the land or promoting conservation of the soil-;
4. Purchasing farm equipment-;
5. Purchasing livestock-;

6. Paying off and discharging mortgages, encumbrances, and other charges or liens against or on the agricultural real or personal property owned or purchased by the farmer; and
7. ~~Purchasing the farmer's home quarter pursuant to chapter 6-09.10.~~
8. Restructuring operating debt carryover.

**SECTION 15. REPEAL.** Sections 6-09.10-05, 6-09.10-07, 6-09.10-08, and 6-09.11-10 of the North Dakota Century Code are repealed.

Approved April 26, 2011  
Filed April 26, 2011



## CHAPTER 84

### SENATE BILL NO. 2342

(Senators Miller, Dotzenrod, Luick)  
(Representatives Headland, Kingsbury, Paur)

AN ACT to create and enact a new subsection to section 6-09.13-03 of the North Dakota Century Code, relating to eligible uses of the agriculture partnership in assisting community expansion fund; to amend and reenact subsection 3 of section 6-09.13-01 of the North Dakota Century Code, relating to eligible uses for the agriculture partnership in assisting community expansion fund; and to provide for a legislative management study.

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

**SECTION 1. AMENDMENT.** Subsection 3 of section 6-09.13-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Farm business" means any business conducted by the farmer or farmer's family, which is integrated into the farm operation and is intended to supplement farm income to allow the farmer to continue farming. ~~¶The term~~ may include nontraditional agricultural, manufacturing, processing, value-added processing, targeted service industries, or other activities calculated to produce income, ~~and subsurface field tiling projects.~~

**SECTION 2.** A new subsection to section 6-09.13-03 of the North Dakota Century Code is created and enacted as follows:

Subsurface field tiling projects.

**SECTION 3. LEGISLATIVE MANAGEMENT STUDY - SUBSURFACE FIELD TILING.** During the 2011-12 interim, the legislative management shall consider studying the laws and rules relating to subsurface field tiling. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

Approved April 20, 2011  
Filed April 21, 2011

## CHAPTER 85

### HOUSE BILL NO. 1096

(Judiciary Committee)

(At the request of the Bank of North Dakota)

AN ACT to amend and reenact section 6-09-27, subsection 3 of section 6-09.15-01, and section 6-09.15-03 of the North Dakota Century Code, relating to venue of civil actions involving the Bank of North Dakota and the beginning entrepreneur loan guarantee program.

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

**SECTION 1. AMENDMENT.** Section 6-09-27 of the North Dakota Century Code is amended and reenacted as follows:

##### **6-09-27. Civil actions on Bank transactions - Name of parties - Service - Venue.**

1. Civil actions may be brought against the state of North Dakota on account of claims for relief claimed to have arisen out of transactions connected with the operation of the Bank of North Dakota upon condition that the provisions of this section are complied with. In such actions, the state must be designated as "The State of North Dakota, doing business as The Bank of North Dakota". The actions may be brought in the same manner and are subject to the same provisions of law as other civil actions. The action must be brought in Burleigh County except as provided in section 28-04-01 or except as provided in subsection 2.
2. If the Bank seeks to participate in a loan that involves multiple banks and if the loan documents require the Bank to agree that civil actions will be commenced in a state outside of North Dakota, the Bank may agree to venue outside of North Dakota if approved by the attorney general.

**SECTION 2. AMENDMENT.** Subsection 3 of section 6-09.15-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Loan guarantee" means an agreement that in the event of default by a beginning entrepreneur under a note and mortgage or other loan or financing agreement, the Bank of North Dakota shall pay the lender the amount agreed upon up to ~~eighty five percent~~ percentage to be determined by the Bank of the amount of principal due the lender on a loan at the time the claim is approved from the loan guarantee fund.

**SECTION 3. AMENDMENT.** Section 6-09.15-03 of the North Dakota Century Code is amended and reenacted as follows:

##### **6-09.15-03. Application for guarantee - Term - Annual fee.**

A lender may apply to the Bank of North Dakota for a loan guarantee for a loan of ~~up to one hundred thousand dollars~~ amount to be determined by the Bank. The Bank may approve a guarantee of a loan of up to five thousand dollars to a beginning

entrepreneur for use by the beginning entrepreneur for accounting, legal, and business planning and other consulting or advisory services in planning for the establishment of a qualified revenue-producing enterprise. The Bank may approve a guarantee of a loan of up to twenty-five thousand dollars to a beginning entrepreneur without requiring the beginning entrepreneur to provide collateral for the loan. The term of a loan guarantee may not exceed five years. The Bank may charge a lender an annual fee during the term of a loan guarantee. Total outstanding guarantees under this program at the time of issuance may not exceed five percent of the Bank's tier one capital as defined by the department of financial institutions.

Approved April 8, 2011  
Filed April 11, 2011

# CORPORATIONS

## CHAPTER 86

### HOUSE BILL NO. 1091

(Judiciary Committee)  
(At the request of the Securities Commissioner)

AN ACT to amend and reenact subsection 5 of section 10-04-10.1 of the North Dakota Century Code, relating to investment advisory contracts.

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

**SECTION 1. AMENDMENT.** Subsection 5 of section 10-04-10.1 of the North Dakota Century Code is amended and reenacted as follows:

5. It is unlawful for any investment adviser to enter ~~into~~, extend, or renew any investment advisory contract unless ~~the investment advisory contract~~ provides in writing that:
  - a. The investment adviser ~~shall~~may not be compensated on the basis of a share of capital gains, earnings, or capital appreciation of the funds or any portion of the funds of the client. This subdivision does not prohibit an investment advisory contract that provides for compensation based on the total value of a fund determined as of a definite date or averaged as of definite dates or over a definite period. This subdivision does not prohibit an investment advisory contract that provides for performance fees permitted and determined in accordance with section 205 of the Investment Advisers Act of 1940 [Pub. L. 768; 54 Stat. 852; 15 U.S.C. 80b-5] and the rules adopted thereunder.
  - b. An assignment of the investment advisory contract may not be made by the investment adviser unless the investment adviser notifies the client of the intended assignment and obtains the prior written consent of the client.
  - c. The investment adviser shall provide written notice to the client within fifteen days of any change of ownership in excess of five percent.
  - d. The investment adviser shall provide written notice to the client within fifteen days of a change of controlling interest of the investment adviser. The client may terminate the investment advisory contract without penalty by providing a written notice to the investment adviser within thirty days after the client's receipt of the notice of change of controlling interest.

Approved May 9, 2011  
Filed May 10, 2011

## CHAPTER 87

### SENATE BILL NO. 2174

(Senator Nething)  
(Representative DeKrey)

AN ACT to create and enact subsection 6 to section 10-01.1-06, sections 10-15-51.1 and 10-15-52.7, subsection 12 to section 10-15-54, and sections 10-15-57.1, 10-15-57.2, and 45-21-04.3 of the North Dakota Century Code, relating to listing of commercial registered agents, cooperative associations, corporations, limited liability companies, nonprofit corporations, limited partnerships, and general partnerships; and to amend and reenact sections 10-06.1-17 and 10-15-08.1, subsection 37 of section 10-19.1-01, subsection 4 of section 10-19.1-10, sections 10-19.1-13 and 10-19.1-31, subsection 2 of section 10-19.1-51, section 10-19.1-52, subsection 2 of section 10-19.1-58, subsection 1 of section 10-19.1-68, subsection 2 of section 10-19.1-70, subsection 1 of section 10-19.1-73, subsection 2 of section 10-19.1-84, subsection 1 of section 10-19.1-104, section 10-19.1-141, subsection 2 of section 10-19.1-146, sections 10-19.1-147 and 10-19.1-149, subsection 39 of section 10-32-02, sections 10-32-07, 10-32-09, and 10-32-10, subsection 1 of section 10-32-40, subsection 2 of section 10-32-51, section 10-32-68, subsection 2 of section 10-32-87, section 10-32-88, subsection 2 of section 10-32-94, subsection 1 of section 10-32-108, sections 10-32-144 and 10-32-150, subsection 5 of section 10-32-152, section 10-32-153, subsection 27 of section 10-33-01, subsections 3 and 4 of section 10-33-06, section 10-33-10, subsections 1, 2, and 3 of section 10-33-15, sections 10-33-26 and 10-33-28, subsection 2 of section 10-33-38, sections 10-33-39 and 10-33-43, subsection 2 of section 10-33-44, subsection 2 of section 10-33-46, sections 10-33-49, 10-33-51, and 10-33-52, subsection 2 of section 10-33-54, subsection 11 of section 10-33-84, subsection 2 of section 10-33-87, section 10-33-94, subsection 3 of section 10-33-98, section 10-33-134, subsection 1 of section 10-33-140, sections 10-33-142, 10-35-33, 45-10.2-10, 45-10.2-85, and 45-10.2-87, subsection 15 of section 45-10.2-109, section 45-10.2-112, subsection 3 of section 45-22-03, and sections 45-22-04, 45-22-16, 45-22-24, and 45-23-03 of the North Dakota Century Code, relating to annual reports of corporate limited liability company farms, cooperative associations, business corporations, limited liability companies, nonprofit corporations, publicly traded corporations, limited partnerships, limited liability partnerships, and limited liability limited partnerships.

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

**SECTION 1.** Subsection 6 to section 10-01.1-06 of the North Dakota Century Code is created and enacted as follows:

6. The secretary of state may make minor modifications to the name of a registered agent in a previously filed record in order to cause the modified name to be consistent with the correct name of a proposed commercial registered agent when it can be concluded from the previously filed record that the name of the proposed commercial registered agent was intended.

**SECTION 2. 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 ~~executed by the corporation's or limited liability company's president, vice president, secretary, or treasurer~~ signed as provided in subsection 53 of section 10-19.1-01 if a corporation and subsection 58 of section 10-32-02 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 provided in section 10-19.1-147 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 provided in subsections 5 and 6 of section 10-32-149 except that the penalties must be calculated from the date of the report required by this section.

**SECTION 3. 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 or implies that 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, the name ~~of a domestic or foreign, 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;~~or;~~
  - (5) A limited partnership, whether profit or nonprofit, authorized to do business in this state, or a;
  - (6) A limited liability limited partnership;
  - (7) A name the right to which is, at the time of organization, in some manner reserved,~~or is a;~~
  - (8) A fictitious name registered with the secretary of state as provided in chapter 45-11,~~or is a;~~
  - (9) A trade name registered with the secretary of state as provided in chapter 47-25, unless there is filed with the articles; ~~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 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:
- (1)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 name, or the holder of a reserved name, registered trade name ~~or,~~ fictitious name, or trademark or service mark; or
  - (2)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.
- 2-3. The secretary of state shall determine whether a cooperative name is deceptively similar to another name for purposes of this chapter.
- 3-4. 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.



- 4-5. A cooperative that is involuntarily dissolved by the secretary of state under section 10-15-36 may reacquire the right to use that name by reinstating the cooperative within the time provided in section 10-15-36 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 1. 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 4.** Section 10-15-51.1 of the North Dakota Century Code is created and enacted as follows:

**10-15-51.1. Foreign cooperative - Name.**

A foreign cooperative may apply for a certificate of authority under any name that would be available to a domestic cooperative, whether the name is the name under which it is authorized in its jurisdiction of origin. A trade name must be registered as provided in chapter 47-25 when applying for a certificate of authority under a name different from the name authorized in the jurisdiction of origin.

**SECTION 5.** Section 10-15-52.7 of the North Dakota Century Code is created and enacted as follows:

**10-15-52.7. Foreign cooperative - Revocation of certificate of authority.**

1. The certificate of authority of a foreign cooperative to transact business in this state may be revoked by the secretary of state if:
- a. The foreign cooperative has failed to:
- (1) Appoint and maintain a registered agent, and if a noncommercial registered agent, then the registered office of the noncommercial registered agent as provided in chapter 10-01.1;
  - (2) File in the office of the secretary of state any amendment to its application for a certificate of authority as provided in section 10-15-52.3;
  - (3) File in the office of the secretary of state any merger as provided in section 10-15-52.1;
  - (4) File in the office of the secretary of state an application for a certificate of withdrawal of its authority as provided in section 10-15-52.5 when the cooperative's existence has expired or the cooperative has been dissolved in the jurisdiction of origin; or
- b. A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the foreign cooperative pursuant to this chapter.

2. Except for revocation of the certificate of authority for failure to file the annual report as provided in section 10-15-36, no certificate of authority of a foreign cooperative may be revoked by the secretary of state unless:
  - a. The secretary of state has given the foreign cooperative at least sixty days' notice by mail addressed to its registered agent at the registered office in this state or, if the foreign cooperative fails to appoint and maintain a registered agent in this state, then addressed to its principal executive office; and
  - b. During the sixty-day period, the foreign cooperative has failed to:
    - (1) File the report of change as provided in chapter 10-01.1 regarding the registered office or the registered agent;
    - (2) File any amendment;
    - (3) File any merger;
    - (4) File an application for certificate of withdrawal; or
    - (5) Correct the misrepresentation.
3. Upon the expiration of sixty days after the mailing of the notice, the authority of the foreign cooperative to transact business in this state ceases and the secretary of state shall issue a notice of revocation and shall mail the notice to the registered agent at the registered office in this state or, if the foreign cooperative failed to appoint and maintain a registered agent or a registered office in this state, then addressed to the principal executive office of the foreign cooperative.

**SECTION 6.** Subsection 12 to section 10-15-54 of the North Dakota Century Code is created and enacted as follows:

12. Filing a statement of correction, twenty dollars.

**SECTION 7.** Section 10-15-57.1 of the North Dakota Century Code is created and enacted as follows:

**10-15-57.1. Correcting a filed record.**

With respect to correction of a filed record:

1. Whenever a record authorized by this chapter to be filed with the secretary of state has been filed and inaccurately records the action referred to in the record, contains an inaccurate or erroneous statement, or was defectively or erroneously signed, sealed, acknowledged, or verified, the record may be corrected by filing a statement of correction.
2. A statement of correction:
  - a. Must:
    - (1) Be signed by:
      - (a) The person that signed the original record; or

- (b) By a person authorized to sign on behalf of that person:
    - (2) Set forth the name of the cooperative that filed the record;
    - (3) Identify the record to be corrected by description and by the date of its filing with the secretary of state;
    - (4) Identify the inaccuracy, error, or defect to be corrected; and
    - (5) Set forth a statement in corrected form of the portion of the record to be corrected.
  - b. May not revoke or nullify the record.
3. The statement of correction must be filed with the secretary of state.
  4. With respect to the effective date of correction:
    - a. A certificate issued by the secretary of state before a record is corrected, with respect to the effect of filing the original record, is considered to be applicable to the record as corrected as of the date the record as corrected is considered to have been filed under this subsection.
    - b. After a statement of correction has been filed with the secretary of state, the original record as corrected is considered to have been filed on the date the original record was filed as to all other persons and for all other purposes.

**SECTION 8.** Section 10-15-57.2 of the North Dakota Century Code is created and enacted as follows:

**10-15-57.2. Secretary of state - Certificates and certified copies to be received in evidence.**

1. All certificates issued by the secretary of state and all copies of records filed in accordance with this chapter, when certified by the secretary of state, may be taken and received in all courts, public offices, and official bodies as evidence of the facts stated.
2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to a cooperative which would not appear from a certified copy of any of the foregoing records or certificates, may be taken and received in all courts, public offices, and official bodies as evidence of the existence or nonexistence of the facts stated.
3. Any certificate or certified copy issued by the secretary of state under this section may be created and disseminated as an electronic record with the same force and effect as if produced in a paper form.

**SECTION 9. AMENDMENT.** Subsection 37 of section 10-19.1-01 of the North Dakota Century Code is amended and reenacted as follows:

37. "Officer" means an individual who is eighteen years of age or more who is:

- a. Elected, appointed, or otherwise designated as ~~an~~the president, the treasurer, or any other officer by the board pursuant to section 10-19.1-52; or
- b. Deemed elected as an officer pursuant to section 10-19.1-56.

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

4. The following provisions relating to the management of the business or the regulation of the affairs of a corporation may be included either in the articles or, except for naming members of the first board fixing a greater than majority director or shareholder vote or giving or prescribing the manner of giving voting rights to persons other than shareholders otherwise than pursuant to the articles, or eliminating or limiting a director's personal liability, in the bylaws:
  - a. The members of the first board may be named in the articles as provided in subsection 1 of section 10-19.1-32.
  - b. A manner for increasing or decreasing the number of directors as provided in section 10-19.1-33.
  - c. Additional qualifications for directors may be imposed as provided in section 10-19.1-34.
  - d. Directors may be classified as provided in section 10-19.1-38.
  - e. The day or date, time, and place of board meetings may be fixed as provided in subsection 1 of section 10-19.1-43.
  - f. Absent directors may be permitted to give written consent or opposition to a proposal as provided in section 10-19.1-44.
  - g. A larger than majority vote may be required for board action as provided in section 10-19.1-46.
  - h. A director's personal liability to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director may be eliminated or limited in the articles as provided in section 10-19.1-50.
  - i. Authority to sign and deliver certain documents may be delegated to an officer or agent of the corporation other than the president as provided in section 10-19.1-53.
  - j. Additional officers may be designated as provided in section 10-19.1-52.
  - k. Additional powers, rights, duties, and responsibilities may be given to officers as provided in section 10-19.1-53.
  - l. A method for filling vacant offices may be specified as provided in subsection 3 of section 10-19.1-58.
  - m. A certain officer or agent may be authorized to sign share certificates as provided in subsection 1 of section 10-19.1-66.

- n. The transfer or registration of transfer of securities may be restricted as provided in section 10-19.1-70.
- o. The day or date, time, and place of regular shareholder meetings may be fixed as provided in subsection 3 of section 10-19.1-71.
- p. Certain persons may be authorized to call special meetings of shareholders as provided in subsection 1 of section 10-19.1-72.
- q. Notices of shareholder meetings may be required to contain certain information as provided in subsection 3 of section 10-19.1-73.
- r. ~~A larger than majority vote may be required for shareholder action as provided in section 10-19.1-74.~~ Voting rights may be granted in or pursuant to the articles to persons who are not shareholders as provided in subsection 6 of section 10-19.1-73.2.
- s. ~~Voting rights may be granted in or pursuant to the articles to persons who are not shareholders as provided in subsection 6 of section 10-19.1-73.2.~~ A larger than majority vote may be required for shareholder action as provided in section 10-19.1-74.
- t. Corporate actions giving rise to dissenter rights may be designated as provided in subdivision d of subsection 1 of section 10-19.1-87.
- u. The rights and priorities of persons to receive distributions may be established as provided in section 10-19.1-92.

**SECTION 11. 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 or in any other language expressed in English 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 or implies the corporation:
    - (1) Is incorporated for a purpose other than:
      - (a) A lawful business purpose for which a corporation may be incorporated under this chapter; or
      - (b) For a purpose stated in its articles of incorporation; or

- (2) May not be incorporated under this chapter.
- e. May not be the same as, or deceptively similar to:
  - (1) The name, whether foreign and authorized to do business in this state or domestic, unless there is filed with the articles a record that complies with subsection 3, of:
    - (a) Another corporation;
    - (b) A corporation incorporated or authorized to do business in this state under another chapter of this code;
    - (c) A limited liability company;
    - (d) A limited partnership;
    - (e) A limited liability partnership; or
    - (f) A limited liability limited partnership;
  - (2) A name the right to which is, at the time of incorporation, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - (3) A fictitious name registered in the manner provided in chapter 45-11; ~~or~~
  - (4) A trade name registered in the manner provided in chapter 47-25; 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 another name for purposes of this chapter.
3. If the secretary of state determines that a corporate name is "deceptively similar" to another name for purposes of this chapter, then the corporate name may not be used unless there is filed with the articles:
  - a. The written consent of the holder of the rights to the name to which the proposed name has been determined to be deceptively similar; or
  - b. A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.
4. This subsection does not affect the right of a domestic corporation existing on July 1, 1986, or a foreign corporation authorized to do business in this state on that date to continue the use of its name.
5. This section and section 10-19.1-14 do not:
  - a. Abrogate or limit:
    - (1) The law of unfair competition or unfair practices;
    - (2) Chapter 47-25;

- (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, service marks; or
    - (4) Any other rights to the exclusive use of names or symbols; or
  - b. Derogate the common law or the principles of equity.
6. A domestic or foreign corporation that is the surviving organization in a merger with one or more other organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization including its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other organizations, if the other organization whose name is sought to be used:
  - a. Was incorporated, organized, formed, or registered under the laws of this state;
  - b. Is authorized to transact business or conduct activities in this state;
  - c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
  - e. Holds a trade name registered in the manner provided in chapter 47-25; 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 may reacquire the right to use that name by refiling articles of incorporation pursuant to section 10-19.1-11, unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment as provided in subsection 2. A corporation that cannot reacquire the use of its corporate name shall adopt a new corporate name that complies with the provisions of this section:
  - a. By refiling articles of incorporation pursuant to section 10-19.1-11;
  - b. By amending pursuant to section 10-19.1-17; or
  - c. By reinstating pursuant to section 10-19.1-146.

9. Subject to section 10-19.1-133, this section applies to any foreign corporation transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.
10. An amendment that only changes the name of the corporation may be authorized by a resolution approved by the board and may, but need not, be submitted to and approved by the shareholders as provided in section 10-19.1-18.
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 12. AMENDMENT.** Section 10-19.1-31 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-31. Bylaws.**

1. A corporation may, but need not, have bylaws. Bylaws may contain any provision relating to the management or the regulation of the affairs of the corporation not inconsistent with section 10-19.1-32 or any other provision of law or the articles, including:
  - a. The number of directors, and the qualifications, manner of election, powers, duties, and compensation, if any, of directors;
  - b. The qualifications of shareholders;
  - c. Different classes of shares;
  - d. The manner of admission, withdrawal, suspension, and expulsion of shareholders;
  - e. Property, voting, and other rights and privileges of shareholders;
  - f. The appointment and authority of committees;
  - g. The appointment or election, duties, compensation, and tenure of officers;
  - h. The time, place, and manner of calling, conducting, and giving notice of shareholder, board, and committee meetings, or of conducting mail ballots;
  - i. The making of reports and financial statements to shareholders; or
  - j. The number establishing a quorum for meetings of members and the board.
2. ~~Initial~~ Unless reserved by the articles to shareholders with voting rights, initial bylaws may be adopted ~~by the first board or by a majority of the incorporators, or by the first board~~ pursuant to section 10-19.1-30. Unless reserved by the articles to the shareholders with voting rights, the power to adopt, amend, or repeal the bylaws is vested in the board. The power of the board is subject to the power of the shareholders, exercisable in the manner provided in subsection 3, to adopt, amend, or repeal bylaws adopted, amended, or repealed by the board.



3. Unless the articles or bylaws provide otherwise, a shareholder or shareholders holding five percent or more of the voting power of the shares entitled to vote may propose a resolution for action by the shareholders to adopt, amend, or repeal bylaws adopted, amended, or repealed by the board.
  - a. The resolution must set forth the provisions proposed for adoption, amendment, or repeal.
  - b. The limitations and procedures for submitting, considering, and adopting the resolution are the same as provided in subsections 2, 3, and 4 of section 10-19.1-19 for amendment of the articles.
  - e. ~~The articles or bylaws may impose different or additional requirements for the shareholders to adopt, amend, or repeal the bylaws.~~

**SECTION 13. AMENDMENT.** Subsection 2 of section 10-19.1-51 of the North Dakota Century Code is amended and reenacted as follows:

2. The contract or transaction described in subsection 1 is not void or voidable if:
  - a. The contract or transaction was, and the person asserting the validity of the contract or transaction was, fair and reasonable as to the corporation at the time it was authorized, approved, or ratified;
  - b. The material facts as to the contract or transaction and as to the director's or directors' interest are fully disclosed or known to the holders of all outstanding shares, whether or not entitled to vote, and the contract or transaction is approved in good faith by:
    - (1) The holders of two-thirds of the voting power of the shares entitled to vote which are owned by persons other than the interested director or directors; or
    - (2) The unanimous affirmative vote of the holder of all outstanding shares, whether or not entitled to vote;
  - c. The material facts as to the contract or transaction and as to the director's or directors' interest are fully disclosed or known to the board or a committee, and the board or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the directors or committee members currently holding office, ~~but~~:
    - (1) However, the interested director or directors shall may not vote and are not be counted in determining considered for purposes of a quorum.
    - (2) If as a result, the number of remaining directors is not sufficient to reach a quorum, then a quorum for the purpose of considering the contract or transaction is the number of remaining directors or committee members, not counting any vote that the interested director might otherwise have in, and not counting the director in determining the presence of a quorum and shall not vote; or
  - d. The contract or transaction is a distribution described in subsection 1 of section 10-19.1-92 or a merger or exchange described in subsection 1 or 2 of section 10-19.1-96.

**SECTION 14. AMENDMENT.** Section 10-19.1-52 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-52. Officers.**

1. The officers of a corporation must be individuals who are eighteen years of age or more, exercising the functions of the offices and ~~shall~~:
  - a. Must consist of a president, a secretary, and a treasurer, however designated; and ~~may~~
  - b. May also include one or more vice presidents and any other officers ~~or agents, however designated~~, as may be provided in the bylaws. ~~Each of the officers~~
2. Unless the articles or the bylaws provide that the shareholders with voting rights may elect the officers:
  - a. Each officer must be elected by the board at ~~the~~ time and in ~~the~~ manner as may be provided in the bylaws ~~unless the articles or bylaws provide that the shareholders may elect the officers;~~ or
  - b. To the extent authorized in the articles, the bylaws, or a resolution approved by the affirmative vote of a majority of the directors present, the president may appoint one or more officers, other than the treasurer.
3. Unless otherwise provided, president means chief executive officer and treasurer means chief financial officer.

**SECTION 15. AMENDMENT.** Subsection 2 of section 10-19.1-58 of the North Dakota Century Code is amended and reenacted as follows:

2. With respect to removal:
  - a. Except as otherwise provided in the articles and bylaws, an officer may be removed at any time, with or without cause, by a resolution approved by the affirmative vote of a majority of the directors present, subject to the provisions of a shareholder control agreement. ~~The removal is without prejudice to any contractual rights of the officer.~~
  - b. An officer appointed by the president also may be removed at any time, with or without cause, by the president.
  - c. To the extent authorized in the articles, the bylaws, or a resolution approved by the affirmative vote of a majority of the directors present, the president may remove an officer elected or appointed by the board, other than the treasurer.
  - d. The articles or the bylaws may provide other manners of removing an officer.
  - e. A removal as described in this subsection is without prejudice to any contractual rights of the officer.

**SECTION 16. AMENDMENT.** Subsection 1 of section 10-19.1-68 of the North Dakota Century Code is amended and reenacted as follows:

1. A corporation may issue fractions of a share originally or upon transfer. If it does not issue fractions of a share, then it shall in connection with an original issuance of shares:
  - a. Arrange for the disposition of fractional interests by those entitled to them;
  - b. Pay in money the fair value of fractions of a share as of the time when persons entitled to receive the fractions are determined; or
  - c. Issue scrip or warrants in registered or bearer form that entitle the holder to receive a certificate for a full share upon the surrender of the scrip or warrants aggregating a full share.

**SECTION 17. AMENDMENT.** Subsection 2 of section 10-19.1-70 of the North Dakota Century Code is amended and reenacted as follows:

2. A written restriction on the transfer or registration of transfer of securities of a corporation which is not manifestly unreasonable under the circumstances and is noted conspicuously on the face or back of the certificate or included in information sent to the holders of uncertificated shares in accordance with subsection 6 of section 10-19.1-66 ~~may be enforced~~ is valid and specifically enforceable against the holder of the restricted securities or a successor or transferee of the holder, including a pledgee or a legal representative.
  - a. Unless noted conspicuously on the face or back of the certificate or included in information sent to holders of uncertificated shares in accordance with subsection 6 of section 10-19.1-66, a restriction, even though permitted by this section, is ineffective against a person without knowledge of the restriction.
  - b. A restriction under this section is deemed to be noted conspicuously and is effective if the existence of the restriction is stated on the certificate and reference is made to a separate record creating or describing the restriction.

**SECTION 18. AMENDMENT.** Subsection 1 of section 10-19.1-73 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided in this chapter, notice of all meetings of shareholders must be given to every holder of shares entitled to vote unless:
  - a. The meeting is an adjourned meeting to be held not more than one hundred twenty days after the date fixed for the original meeting and the date, time, and place of the meeting were announced at the time of the original meeting or any adjournment of the original meeting; or
  - b. The following have been mailed by first-class mail to a shareholder at the address in the corporate records and returned nondeliverable:
    - (1) Two consecutive ~~annual~~ regular meeting notices and notices of any special meetings held during the period between the two ~~annual~~ regular meetings; or
    - (2) All payments of distributions, provided there were at least two sent during a twelve-month period.

An action or meeting that is taken or held without notice under this subdivision has the same force and effect as if notice was given. If the shareholder delivers a written notice of the shareholder's current address to the corporation, the notice requirement is reinstated.

<sup>37</sup> **SECTION 19. AMENDMENT.** Subsection 2 of section 10-19.1-84 of the North Dakota Century Code is amended and reenacted as follows:

2. A corporation shall keep, at its principal executive office or at another place or places within the United States determined by the board, ~~or~~ 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 and usual business addresses of its directors and principal officers;
  - h. Voting trust agreements described in section 10-19.1-81;
  - i. Shareholder control agreements described in section 10-19.1-83; and
  - j. A copy of agreements, contracts, or other arrangements or portions of them incorporated by reference under subsection 8 of section 10-19.1-10.

**SECTION 20. AMENDMENT.** Subsection 1 of section 10-19.1-104 of the North Dakota Century Code is amended and reenacted as follows:

1. A corporation, by affirmative vote of a majority of the directors present upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board deems expedient, and without shareholder approval, may:
  - a. Sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the usual and regular course of its business;

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<sup>37</sup> Section 10-19.1-84 was also amended by section 1 of House Bill No. 1136, chapter 334.

- b. Grant a security interest in all or substantially all of its property and assets whether or not in the usual and regular course of its business; or
- c. Transfer any or all of its property to an organization all the ownership interests of which are owned directly, or indirectly through wholly owned organizations, by the corporation.

**SECTION 21. AMENDMENT.** Section 10-19.1-141 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-141. Foreign corporation - Revocation of certificate of authority.**

1. The certificate of authority of a foreign corporation to transact business in this state may be revoked by the secretary of state if:
  - a. The foreign corporation has failed to:
    - (1) Appoint and maintain a registered agent, and if a noncommercial registered agent, then the registered office of the noncommercial registered agent as provided in chapter 10-01.1; ~~or~~
    - (2) File in the office of the secretary of state any amendment to its application for a certificate of authority as ~~specified~~provided in section 10-19.1-137;
    - (3) File in the office of the secretary of state any merger as provided in section 10-19.1-139; or
    - (4) File in the office of the secretary of state an application for certificate of withdrawal of its authority as provided in section 10-19.1-140 when the corporation's existence has expired or the corporation has been dissolved in the jurisdiction of incorporation; or
  - b. A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the foreign corporation pursuant to this chapter.
2. Except for revocation of the certificate of authority for failure to file the annual report as provided in section 10-19.1-146, no certificate of authority of a foreign corporation may be revoked by the secretary of state unless:
  - a. The secretary of state has given the foreign corporation at least sixty days' notice by mail addressed to its registered agent at the registered office in this state or, if the foreign corporation fails to appoint and maintain a registered agent in this state, then addressed to its principal executive office; and
  - b. During the sixty-day period, the foreign corporation has failed to:
    - (1) File the report of change as provided in chapter 10-01.1 regarding the registered office or the registered agent;
    - (2) File any amendment; ~~or~~
    - (3) File any merger;

(4) File an application for withdrawal; or

(5) Correct the misrepresentation.

3. Upon the expiration of sixty days after the mailing of the notice, the authority of the foreign corporation to transact business in this state ceases; and the secretary of state shall issue a notice of revocation and shall mail the notice to the registered agent at the registered office in this state or, if the foreign corporation failed to appoint and maintain both a registered agent and a registered office in this state, then addressed to the principal executive office of the foreign corporation.

**SECTION 22. 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 ~~5253~~ of section 10-19.1-01, ~~or the articles or the bylaws or a resolution approved by the affirmative vote of the required proportion or number of the directors or holders of shares entitled to vote.~~ If the corporation or foreign corporation is in the hands of a receiver or trustee, it must be signed on behalf of the corporation or foreign corporation by the receiver or trustee. The secretary of state may destroy all annual reports provided for in this section after they have been on file for six years.

**SECTION 23. AMENDMENT.** Section 10-19.1-147 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-147. Fees for filing records - Issuing certificates - License fees.**

The secretary of state shall charge and collect for:

1. Filing articles of incorporation and issuing a certificate of incorporation, one hundred dollars.
2. Filing articles of amendment, twenty dollars.
3. Filing ~~articles~~ a statement of correction, twenty dollars.
4. Filing restated articles of incorporation, thirty dollars.
5. Filing articles of conversion of a corporation or a certificate of fact of conversion of a foreign corporation, fifty dollars and:
  - a. If the organization resulting from the conversion will be a domestic organization governed by the laws of this state, then the fees provided by the governing laws to establish or register a new organization like the organization resulting from the conversion; or
  - b. If the organization resulting from the conversion will be a foreign organization that will transact business in this state, then the fees provided by the governing laws to obtain a certificate of authority or register an organization like the organization resulting from the conversion.
6. Filing abandonment of conversion, fifty dollars.

7. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, fifty dollars.
8. Filing articles of abandonment of merger, fifty dollars.
9. Filing an application to reserve a corporate name, ten dollars.
10. Filing a notice of transfer of a reserved corporate name, ten dollars.
11. Filing a cancellation of reserved corporate name, ten dollars.
12. Filing a consent to use of name, ten dollars.
13. Filing a statement of change of address of registered office, change of registered agent, or both, or a change of address of registered office by registered agent, the fee provided in section 10-01.1-03.
14. Filing a statement of the establishment of a series of shares, twenty dollars.
15. Filing a statement of cancellation of shares, twenty dollars.
16. Filing a statement of reduction of stated capital, twenty dollars.
17. Filing a statement of intent to dissolve, ten dollars.
18. Filing a statement of revocation of voluntary dissolution proceedings, ten dollars.
19. Filing articles of dissolution, twenty dollars.
20. Filing an application of a foreign corporation for a certificate of authority to transact business in this state and issuing a certificate of authority, one hundred forty-five dollars.
21. Filing an application of a foreign corporation for an amended certificate of authority to transact business in this state and issuing an amended certificate of authority, forty dollars.
22. Filing a certificate of fact stating a merger or consolidation of a foreign corporation holding a certificate of authority to transact business in this state, fifty dollars.
23. Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, twenty dollars.
24. Filing an annual report of a corporation or foreign corporation, twenty-five dollars.
  - a. The secretary of state shall charge and collect additional fees for late filing of the annual report as follows:
    - (1) Within ninety days after the date provided in subsection 3 of section 10-19.1-146, twenty dollars;
    - (2) Thereafter, sixty dollars; and

- (3) After the involuntary dissolution of a corporation, or the revocation of the certificate of authority of a foreign corporation, the reinstatement fee of one hundred thirty-five dollars.
- b. Fees paid to the secretary of state according to this subsection are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 10-19.1-146, or the annual report lacks sufficient payment as required by this subsection.
25. Filing any process, notice, or demand for service, the fee provided in section 10-01.1-03.
26. Furnishing a certified copy of any record, instrument, or paper relating to a corporation, the fee provided in section 54-09-04 for copying a record and fifteen dollars for the certificate and affixing the seal thereto.
27. Any record submitted for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the record.
28. Filing any other statement of a corporation or foreign corporation, ten dollars.

**SECTION 24. AMENDMENT.** Section 10-19.1-149 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-149. Secretary of state - Certificates and certified copies to be received in evidence.**

1. All certificates issued by the secretary of state and all copies of records filed in accordance with this chapter, when certified by the secretary of state, ~~must~~ may be taken and received in all courts, public offices, and official bodies as ~~prima facie~~ evidence of the facts stated.
2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing records or certificates, ~~must~~ may be taken and received in all courts, public offices, and official bodies as ~~prima facie~~ evidence of the existence or nonexistence of the facts stated.
3. Any certificate or certified copy issued by the secretary of state under this section may be created and disseminated as an electronic record with the same force and effect as if produced in a paper form.

**SECTION 25. AMENDMENT.** Subsection 39 of section 10-32-02 of the North Dakota Century Code is amended and reenacted as follows:

39. "Manager" means an individual who is eighteen years of age or more and who is:
- a. ~~An individual who is eighteen years of age or more and who is elected~~ Elected, appointed, or otherwise designated as ~~a~~ the president, the treasurer, or any other manager ~~by the board~~ pursuant to section 10-32-88; and/or
  - b. ~~An individual considered~~ Deemed elected as a manager pursuant to section 10-32-92.



**SECTION 26. AMENDMENT.** Section 10-32-07 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-07. Articles of organization.**

1. The articles of organization must contain:
  - a. The name of the limited liability company;
  - b. The name of the registered agent of the limited liability company as provided in chapter 10-01.1 and, if a noncommercial registered agent, then the address of such noncommercial registered agent in this state;
  - c. The name and address of each organizer;
  - d. The effective date of organization:
    - (1) If a later date than that on which the certificate of organization is issued by the secretary of state; and
    - (2) Which may not be later than ninety days after the date on which the certificate of organization is issued; and
  - e. If the articles of organization are filed with the secretary of state:
    - (1) Before July 1, 1999, a statement stating in years that the period of existence for the limited liability company must be a period of thirty years from the date the articles of organization are filed with the secretary of state, unless the articles of organization expressly authorize a shorter or longer period of duration, which may be perpetual.
    - (2) After June 30, 1999, a statement stating in years the period of existence of the limited liability company, if other than perpetual.
2. The following provisions govern a limited liability company unless modified in the articles of organization or a member-control agreement under section 10-32-50:
  - a. A limited liability company has general business purposes as provided in section 10-32-04;
  - b. A limited liability company has certain powers as provided in section 10-32-23;
  - c. ~~The power to adopt, amend, or repeal the bylaws is vested in the board as provided in subsection 2 of section 10-32-68~~termination of a person's membership interest has specified consequences as provided in section 10-32-30;
  - d. ~~A limited liability company must allow cumulative voting for governors as provided in section 10-32-76~~member may only be expelled as provided in subsection 3 of section 10-32-30;
  - e. ~~The affirmative vote of the greater of a majority of governors present or a majority of the minimum number of governors constituting a quorum is~~

- ~~required for an action of the board as provided in section 10-32-83Restrictions apply to the assignment of governance rights as provided in section 10-32-32;~~
- ~~f. A written action by the board taken without a meeting must be signed by all governors as provided in section 10-32-84Unanimous consent is required for the transfer of governance rights to a person not already a member as provided in subsection 2 of section 10-32-32;~~
  - ~~g. The board may accept contributions, make contribution agreements, and make contribution allowance agreements as provided in subsection 1 of section 10-32-56 and sections 10-32-58 and 10-32-59Members share profits and losses in proportion to the value reflected in the required records of the contributions of members as provided in section 10-32-36;~~
  - ~~h. All membership interests are ordinary membership interests entitled to vote and are of one class with no series as provided in subdivisions a and b of subsection 5 of section 10-32-56Unless otherwise provided, a member has certain preemptive rights as provided in section 10-32-37;~~
  - ~~i. All membership interests have equal rights and preferences in all matters not otherwise provided for by the board as provided in subdivision b of subsection 5 of section 10-32-56The voting power of each membership interest is in proportion to the value reflected in the required records of the contributions of the members as provided in section 10-32-40.1;~~
  - ~~j. The value of previous contributions must be restated when a new contribution is accepted as provided in subsections 3 and 4 of section 10-32-57The affirmative vote of the greater of the owners of a majority of the voting power of the membership interests present and entitled to vote at a duly held meeting or a majority of the voting power of the membership interests with voting rights constituting the minimum voting power needed for a quorum for the transaction of business is required for an action of the members, except when this chapter requires the affirmative vote of:
    - ~~(1) A plurality of the votes cast as provided in subsection 1 of section 10-32-76; or~~
    - ~~(2) A majority of the voting power of all membership interests entitled to vote as provided in subsection 1 of section 10-32-42;~~~~
  - ~~k. A member has certain preemptive rights, unless otherwise provided by the board as provided in section 10-32-37A written action by the members may be taken without a meeting as provided in section 10-32-43;~~
  - ~~l. The affirmative vote of the greater of the owners of a majority of the voting power of the membership interests present and entitled to vote at a duly held meeting or a majority of the voting power of the membership interests with voting rights constituting the minimum voting power needed for a quorum for the transaction of business is required for an action of the members, except when this chapter requires the affirmative vote of:
    - ~~(1) A plurality of the votes cast as provided in subsection 1 of section 10-32-76; or~~~~

- (2) ~~A majority of the voting power of all membership interests entitled to vote as provided in subsection 1 of section 10-32-42~~The board may accept contributions, make contribution agreements, and make contribution allowance agreements as provided in subsection 1 of section 10-32-56 and sections 10-32-58 and 10-32-59;
- m. ~~The voting power of each membership interest is in proportion to the value reflected in the required records of the contributions of the members as provided in section 10-32-40.1~~All membership interests are ordinary membership interests entitled to vote and are of one class with no series as provided in subdivisions a and b of subsection 5 of section 10-32-56;
- n. ~~Members share in distributions in proportion to the value reflected in the required records of the contributions of members as provided in section 10-32-60~~All membership interests have equal rights and preferences in all matters as provided in subdivision b of subsection 5 of section 10-32-56;
- o. ~~Members share profits and losses in proportion to the value reflected in the required records of the contributions of members as provided in section 10-32-36~~The value of previous contributions must be restated when a new contribution is accepted as provided in subsections 3 and 4 of section 10-32-57;
- p. ~~A written action by the members taken without a meeting must be signed by all members as provided in section 10-32-43~~Members share in distributions in proportion to the value reflected in the required records of the contributions of members as provided in section 10-32-60;
- q. ~~Members have no right to receive distributions in kind and the limited liability company has only limited rights to make distributions in kind as provided in section 10-32-62;~~
- r. ~~A member is not subject to expulsion as provided in subsection 2 of section 10-32-30~~The power to adopt, amend, or repeal the bylaws is vested in the board as provided in subsection 2 of section 10-32-68;
- s. ~~Unanimous consent is required for the transfer of governance rights to a person not already a member as provided in subsection 2 of section 10-32-32~~A limited liability company must allow cumulative voting for governors as provided in section 10-32-76;
- t. ~~For a limited liability company whose existence begins before July 1, 1999, unanimous consent is required to avoid dissolution as provided in subdivision e of subsection 1 of section 10-32-109~~The affirmative vote of the greater of a majority of governors present or a majority of the minimum number of governors constituting a quorum is required for an action of the board as provided in section 10-32-83;
- u. ~~The termination of a person's membership interest has specified consequences as provided in section 10-32-30~~A written action by the board may be taken without a meeting as provided in section 10-32-84; and
- v. ~~Restrictions apply to the assignment of governance rights as provided in section 10-32-32~~For a limited liability company whose existence begins

before July 1, 1999, unanimous consent is required to avoid dissolution as provided in subdivision e of subsection 1 of section 10-32-109.

3. The following provisions govern a limited liability company unless modified in the articles of organization, a member-control agreement under section 10-32-50, or in the bylaws:
  - a. ~~Governors serve for an indefinite term that expires at the next regular meeting of members as provided in section 10-32-72~~Regular meetings of members need not be held, unless demanded by a member under certain conditions as provided in section 10-32-38;
  - b. ~~The compensation of governors is fixed by the board as provided in section 10-32-74~~In all instances when a specific minimum notice period has not otherwise been fixed by law, not less than ten days' notice is required for a meeting of members as provided in subsection 3 of section 10-32-40;
  - c. ~~A certain method must be used for removal of governors as provided in section 10-32-78~~The board may fix a date up to fifty days before the date of a members' meeting as the date for the determination of the members entitled to notice of and entitled to vote at the meeting as provided in section 10-32-40.1;
  - d. ~~A certain method must be used for filling board vacancies as provided in section 10-32-79~~A quorum at a members' meeting requires a majority of the voting power of the membership interests entitled to vote at the meeting as provided in section 10-32-44;
  - e. ~~If the board fails to select a place for a board meeting, it must be held at the principal executive office as provided in subsection 1 of section 10-32-80~~Members have no right to interim distributions except as provided through the bylaws or an act of the board as provided in section 10-32-61;
  - f. ~~The notice of a board meeting need not state the purpose of the meeting as provided in subsection 3 of section 10-32-80~~The board may authorize, and the limited liability company may make, distributions not prohibited, limited, or restricted by an agreement as provided in subsection 1 of section 10-32-64;
  - g. ~~A majority of the board is a quorum for a board meeting as provided in section 10-32-82~~Governors serve for an indefinite term that expires at the next regular meeting of members as provided in section 10-32-72;
  - h. A committee:
    - (1) Must consist of one or more individuals, who need not be governors, appointed by affirmative vote of a majority of the governors present as provided in subsection 2 of section 10-32-85; and
    - (2) A committee may create one or more subcommittees, each consisting of one or more members of the committees and may delegate to the subcommittee any or all of the authority of the committee as provided in subsection 7 of section 10-32-85The compensation of governors is fixed by the board as provided in section 10-32-74;

- i. ~~The board may establish a special litigation committee as provided in section 10-32-85~~Certain methods must be used for removal of governors as provided in sections 10-32-78 and 10-32-78.1;
- j. ~~The president and treasurer have specified duties, until the board determines otherwise as provided in section 10-32-89~~A certain method must be used for filling board vacancies as provided in section 10-32-79;
- k. ~~Managers may delegate some or all of their duties and powers, if not prohibited by the board from doing so as provided in section 10-32-95~~If the board fails to select a place for a board meeting, it must be held at the principal executive office as provided in subsection 1 of section 10-32-80;
- l. ~~Regular meetings of members need not be held, unless demanded by a member under certain conditions as provided in section 10-32-38~~The notice of a board meeting need not state the purpose of the meeting as provided in subsection 3 of section 10-32-80;
- m. ~~In all instances when a specific minimum notice period has not otherwise been fixed by law, not less than ten days' notice is required for a meeting of members as provided in subsection 2 of section 10-32-40~~A majority of the board is a quorum for a board meeting as provided in section 10-32-82;
- n. ~~For a quorum at a members' meeting, there is required a majority of the voting power of the membership interests entitled to vote at the meeting as provided in section 10-32-44~~The board may establish a special litigation committee as provided in subsection 1 of section 10-32-85;
- o. ~~The board may fix a date up to fifty days before the date of a members' meeting as the date for the determination of the members entitled to notice of and entitled to vote at the meeting as provided in section 10-32-40.1~~A committee:
  - (1) Must consist of one or more individuals, who need not be governors, appointed by the board as provided in subsection 2 of section 10-32-85; and
  - (2) May create one or more subcommittees, each consisting of one or more members of the committees and may delegate to the subcommittee any or all of the authority of the committee as provided in subsection 7 of section 10-32-85;
- p. ~~Indemnification of certain persons is required as provided in section 10-32-99~~The president and treasurer have specified duties, until the board determines otherwise as provided in section 10-32-89;
- q. ~~The board may authorize, and the limited liability company may make, distributions not prohibited, limited, or restricted by an agreement as provided in subsection 1 of section 10-32-64~~Managers may delegate some or all of their duties and powers, if not prohibited by the board from doing so, as provided in section 10-32-95; and
- r. ~~Members have no right to interim distributions except as provided through the bylaws or an act of the board as provided in section~~

~~10-32-64~~ Indemnification of certain persons is required as provided in section 10-32-99.

4. The provisions in subdivisions ~~ad, e, g, e, pm, and rn~~ may be included in the articles of organization or a member-control agreement under section 10-32-50. The provisions in subdivisions ~~a, b, c, f, h~~ through ~~fl, h, i, j, k, l, m, n, o, p, q,~~ and ~~qr~~ may be included in the articles of organization, in a member-control agreement under section 10-32-50, or, in the bylaws:
  - a. ~~The persons to serve as the first board may be named in the articles of organization as provided in subsection 1 of section 10-32-69~~The date, time, and place of regular member meetings may be fixed as provided in subsection 3 of section 10-32-38;
  - b. ~~A manner for increasing or decreasing the number of governors may be provided as provided in section 10-32-70~~Certain persons may be authorized to call special meetings of members as provided in subsection 1 of section 10-32-39;
  - c. ~~Additional qualifications for governors may be imposed as provided in section 10-32-74~~Notices of member meetings may be required to contain certain information as provided in subsection 3 of section 10-32-40;
  - d. ~~Governors may be classified as provided in section 10-32-75~~Voting rights may be granted to persons who are not members as provided in subsection 6 of section 10-32-40.1;
  - e. ~~The date, time, and place of board meetings may be fixed as provided in subsection 1 of section 10-32-80~~A larger than majority vote may be required for member action as provided in section 10-32-42;
  - f. ~~Absent governors may be permitted to give written consent or opposition to a proposal as provided in section 10-32-84~~Limited liability company actions giving rise to dissenters' rights may be designated as provided in subdivision d of subsection 1 of section 10-32-55;
  - g. ~~A larger than majority vote may be required for board action as provided in section 10-32-83~~The persons to serve as the first board may be named as provided in subsection 1 of section 10-32-69;
  - h. ~~Authority to sign and deliver certain records may be delegated to a manager or agent of the limited liability company other than the president as provided in section 10-32-89~~A manner for increasing or decreasing the number of governors may be specified as provided in section 10-32-70;
  - i. ~~Additional managers may be designated as provided in section 10-32-88~~Additional qualifications for governors may be imposed as provided in section 10-32-71;
  - j. ~~Additional powers, rights, duties, and responsibilities may be given to managers as provided in section 10-32-89~~Governors may be classified as provided in section 10-32-75;

- k. ~~A method for filling vacant offices may be specified as provided in subsection 3 of section 10-32-94. The date, time, and place of board meetings may be fixed as provided in subsection 1 of section 10-32-80;~~
  - l. ~~The date, time, and place of regular member meetings may be fixed as provided in subsection 3 of section 10-32-38. Absent governors may be permitted to give written consent or opposition to a proposal as provided in section 10-32-81;~~
  - m. ~~Certain persons may be authorized to call special meetings of members as provided in subsection 1 of section 10-32-39. A larger than majority vote may be required for board action as provided in section 10-32-83;~~
  - n. ~~Notices of member meetings may be required to contain certain information as provided in subsection 3 of section 10-32-40. The personal liability of a governor to the limited liability company or to the members of the limited liability company for monetary damages for breach of fiduciary duty as a governor may be eliminated or limited in the articles as provided in subsection 5 of section 10-32-86;~~
  - o. ~~A larger than majority vote may be required for member action as provided in section 10-32-42. Additional managers may be designated as provided in section 10-32-88;~~
  - p. ~~Voting rights may be granted in or pursuant to the articles of organization to persons who are not members as provided in subsection 3 of section 10-32-40. Authority to sign and deliver certain records may be delegated to a manager or agent of the limited liability company as provided in section 10-32-89;~~
  - q. ~~Limited liability company actions giving rise to dissenters' rights may be designated as provided in subdivision d of subsection 1 of section 10-32-55. Additional powers, rights, duties, and responsibilities may be given to managers as provided in section 10-32-89; and~~
  - r. ~~A governor's personal liability to the limited liability company or the limited liability company's members for monetary damages for breach of fiduciary duty as a governor may be eliminated or limited in the articles as provided in subsection 4 of section 10-32-86. A method for filling vacant offices may be specified as provided in subsection 3 of section 10-32-94.~~
5. The articles of organization may contain other provisions not inconsistent with law relating to the management of the business or the regulation of the affairs of the limited liability company.
  6. It is not necessary to set forth in the articles of organization any of the limited liability company powers granted by this chapter.
  7. Subsection 4 does not limit the right of the board by resolution to take an action the bylaws may authorize under this subsection without including the authorization in the bylaws, unless the authorization is required to be included in the bylaws by another provision of this chapter.
  8. Except for provisions included pursuant to subsection 1, any provision of the articles may:

- a. Be made dependent upon facts ascertainable outside the articles, but only if the manner in which the facts operate upon the provision is clearly and expressly set forth in the articles; and
- b. Incorporate by reference some or all of the terms of any agreements, contracts, or other arrangements entered into by the limited liability company, but only if the limited liability company retains at its principal executive office a copy of the agreements, contracts, or other arrangements or the portions incorporated by reference.

**SECTION 27. AMENDMENT.** Section 10-32-09 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-09. Effective date of organization.**

The limited liability company existence begins upon the issuance of the certificate of organization or at a later date as specified in the articles of organization. A certificate of organization is conclusive evidence that all conditions precedent and required to be performed by the organizers have been performed and that the limited liability company has been organized under this chapter, except as against this state in a proceeding to cancel or revoke the certificate of organization or in a judicial intervention proceeding pursuant to section 10-32-119.

**SECTION 28. AMENDMENT.** Section 10-32-10 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-10. Limited liability company name.**

1. The limited liability company name:
  - a. Must be expressed in letters or characters used in the English language ~~or in any other language expressed in English~~ as those letters or characters appear in the American standard code for information interchange (ASCII) 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 subdivision b;
  - d. May not contain a word or phrase that indicates or implies that the limited liability company:
    - (1) Is organized for a purpose other than:



- (a) A lawful business purpose for which a limited liability company may be organized under this chapter; or
    - (b) For a purpose stated in its articles of organization; or
  - (2) May not be organized under this chapter; and
- e. May not be the same as, or deceptively similar to:
  - (1) The name, whether foreign and authorized to do business in this state or domestic, unless there is filed with the articles a record which complies with subsection 3, of:
    - (a) Another limited liability company;
    - (b) A corporation;
    - (c) A limited partnership;
    - (d) A limited liability partnership; or
    - (e) A limited liability limited partnership;
  - (2) A name, the right of which is, at the time of organization, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - (3) A fictitious name registered in the manner provided in chapter 45-11; or
  - (4) A trade name registered in the manner provided in chapter 47-25; 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 another name for purposes of this chapter.
- 3. If the secretary of state determines that a limited liability company name is deceptively similar to another name for purposes of this chapter, then the limited liability company name may not be used unless there is filed with the articles:
  - a. The written consent of the holder of the rights to the name to which the proposed name has been determined to be deceptively similar; or
  - b. A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.
- 4. This section and section 10-32-11 do not:
  - a. Abrogate or limit:
    - (1) The law of unfair competition or unfair practices;
    - (2) Chapter 47-25;

- (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, and service marks; or
    - (4) Any other rights to the exclusive use of names or symbols.
  - b. Derogate the common law or the principles of equity.
5. A domestic or foreign limited liability company that is the surviving organization in a merger with one or more other organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization including its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other organizations, if the organization whose name is sought to be used:
  - a. Was organized, incorporated, formed, or registered under the laws of this state;
  - b. Is authorized to transact business or conduct activities in this state;
  - c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - d. Holds a fictitious name registered in the manner provided in chapter 45-11; ~~or~~
  - e. Holds a trade name registered in the manner provided in chapter 47-25; 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 dissolved by the secretary of state pursuant to section 10-32-149 may reacquire the right to use that name by refiling articles of organization pursuant to section 10-32-20, unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment pursuant to subsection 2. A limited liability company that cannot reacquire the use of its limited liability company name shall adopt a new limited liability company name which complies with the provisions of this section:
  - a. By refiling the articles of organization pursuant to section 10-32-07;
  - b. By amending pursuant to section 10-32-18; or
  - c. By reinstating pursuant to section 10-32-149.

8. Subject to section 10-32-136, this section applies to any foreign limited liability company transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.
9. An amendment that only changes the name of the limited liability company may be authorized by a resolution approved by the board and may, but need not, be submitted to and approved by the members as provided in section 10-32-15.
10. A limited liability company that files its articles of organization with an effective date later than the date of filing as provided in section 10-32-09 shall maintain the right to the name until the effective date.

**SECTION 29. AMENDMENT.** Subsection 1 of section 10-32-40 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided in this chapter, notice of all meetings of members must be given to every owner of membership interests entitled to vote, unless:
  - a. The meeting is an adjourned meeting to be held not more than one hundred twenty days after the date fixed for the original meeting and the date, time, and place of the meeting were announced at the time of the original meeting or any adjournment of the original meeting; or
  - b. The following have been mailed by first-class mail to a member at the address in the limited liability company records and returned nondeliverable:
    - (1) Two consecutive ~~annual~~regular meeting notices and notices of any special meetings held during the period between the two ~~annual~~regular meetings; or
    - (2) All payments of distribution sent during a twelve-month period, provided there were at least two sent during the twelve-month period.
  - c. An action or meeting that is taken or held without notice under subdivision b has the same force and effect as if notice was given. If the member delivers a written notice of the member's current address to the limited liability company, the notice requirement is reinstated.

**SECTION 30. AMENDMENT.** Subsection 2 of section 10-32-51 of the North Dakota Century Code is amended and reenacted as follows:

2. A member of a limited liability company has an absolute right, upon written demand, to examine and copy, in person or by a legal representative, at any reasonable time, and the limited liability company shall make available within ten days after receipt by a manager of the limited liability company of the written demand, all records referred to in subsection 1. If such documents are maintained at a place outside of this state, then the limited liability company shall make such documents available at its registered office, at its principal executive office within this state, or at such other place as the limited liability company and the member may agree.

**SECTION 31. AMENDMENT.** Section 10-32-68 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-68. Bylaws.**

1. A limited liability company may have bylaws, which may be known as an operating agreement. The bylaws may contain any provision relating to the management of the business or the regulation of the affairs of the limited liability company not inconsistent with section 10-32-69 or any other provision of law or the articles of organization. ~~An act of the board under subsection 2 and of the members under subsection 3 will be considered part of the bylaws only if the act expressly states that it is intended to constitute or revise the bylaws, including:~~
  - a. The number of governors and the qualifications, manner of election, powers, duties, and compensation, if any, of governors;
  - b. The qualifications of members;
  - c. Different classes of membership;
  - d. The manner of admission, withdrawal, suspension, and expulsion of members;
  - e. Property, voting, and other rights and privileges of members;
  - f. The appointment and authority of committees;
  - g. The appointment or election, duties, compensation, and tenure of offices;
  - h. The time, place, and manner of calling, conducting, and giving notice of member, board, and committee meetings, or of conducting mail ballots;
  - i. The making of reports and financial statements to members; or
  - j. The number establishing a quorum for meetings of members and the board.
2. ~~Initial~~ Unless reserved by the articles to members with voting rights, initial bylaws may be adopted pursuant to section 10-32-67 by a majority of the organizers or by the first board pursuant to section 10-32-67. Unless reserved by the articles of organization or a member-control agreement to the members with voting rights, the power to adopt, amend, or repeal the bylaws is vested in the board. The power of the board is subject to the power of the members, exercisable in the manner provided in subsection ~~34~~, to adopt, amend, or repeal the bylaws adopted, amended, or repealed by the board.
3. The bylaws may be amended in the manner provided in the articles or bylaws.
  - a. In the absence of such a provision, the following bylaw amendments are subject to approval by the members with voting rights:
    - (1) Fixing a quorum for meetings of members;
    - (2) Prescribing procedures for:
      - (a) Removing governors;
      - (b) Filling vacancies in the board;

(c) Fixing the number of governors or their classifications, qualifications, or terms of office;

(3) Removing or adding members; or

(4) Increasing or decreasing the vote required for member actions.

4. Unless the articles or bylaws provide otherwise, members owning five percent or more of the voting power of the members entitled to vote may propose a resolution for action by the members to adopt, amend, or repeal the bylaws adopted, amended, or repealed by the board ~~and the~~.
- a. ~~The~~ resolution must set forth the provision or provisions proposed for adoption, amendment, or repeal.
- b. The limitations and procedures for submitting, considering, and adopting the resolution are the same as provided in subsections 2 through 4 of section 10-32-16 for amendment of the articles of organization. ~~The articles or bylaws may impose different or additional requirements for the members to adopt, amend, or repeal the bylaws.~~

**SECTION 32. AMENDMENT.** Subsection 2 of section 10-32-87 of the North Dakota Century Code is amended and reenacted as follows:

2. The contract or transaction described in subsection 1 is not void or voidable if:
- a. The contract or transaction was, and the person asserting the validity of the contract or transaction sustains the burden of establishing that the contract or transaction was, fair and reasonable as to the limited liability company at the time it was authorized, approved, or ratified;
- b. The material facts as to the contract or transaction and as to the governor's interest are fully disclosed or known to the members, whether entitled to vote, and the contract or transaction is approved in good faith by:
- (1) The owners of two-thirds of the voting power of membership interests entitled to vote which are owned by persons other than the interested governor; or
- (2) The unanimous affirmative vote of all members, whether entitled to vote;
- c. The material facts as to the contract or transaction and as to the governor's interest are fully disclosed or known to the board or a committee, and the board or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the governors or committee members currently holding office, ~~but~~:
- (1) However, the interested governor is or governors may not vote and are not considered for purposes of a quorum.
- (2) If as a result, the number of remaining governors is not sufficient to reach a quorum, then a quorum for the purpose of considering the contract or transaction is the number of remaining governors or committee members, not counting any vote that the interested

~~governor might otherwise have, and not counted counting the governor in determining the presence of a quorum and shall not vote; or~~

- d. The contract or transaction is a distribution described in subsection 1 of section 10-32-64 or a merger or exchange described in subsection 1 or 2 of section 10-32-100.

**SECTION 33. AMENDMENT.** Section 10-32-88 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-88. Managers.**

A

1. ~~The managers of a~~ limited liability company must ~~consist of one or more~~ be individuals eighteen years of age or more, exercising the functions of the offices, ~~however designated, of and:~~
  - a. ~~Must include a~~ president, ~~a~~ secretary, and ~~a~~ treasurer, ~~however designated; and may have~~
  - b. ~~May include~~ one or more vice presidents ~~and a secretary, however designated, as may be provided in the bylaws. Any other managers, assistant managers, and agents, as necessary, may~~
2. ~~Unless the articles or the bylaws provide that the members with voting rights may elect the officers:~~
  - a. ~~Each officer must~~ be elected ~~or appointed~~ by the board ~~or chosen at the time and in such other the~~ manner as may be provided in the bylaws.
  - b. ~~To the extent authorized in the articles, the bylaws, or a resolution approved by the affirmative vote of a majority of the governors present, and subject to any member-control agreement, the president may appoint one or more managers, other than the treasurer.~~
3. ~~Unless otherwise provided, president shall mean chief executive officer or chief manager and treasurer shall mean chief financial manager.~~

**SECTION 34. AMENDMENT.** Subsection 2 of section 10-32-94 of the North Dakota Century Code is amended and reenacted as follows:

2. With respect to removal:
  - a. Except as otherwise provided in the articles, the bylaws, or a member-control agreement, a manager may be removed at any time, with or without cause, by a resolution approved by the affirmative vote of a majority of the governors present. ~~The~~
  - b. A manager appointed by the president also may be removed at any time, with or without cause, by the president.
  - c. To the extent authorized in the articles of organization, the bylaws, or a member-control agreement may provide other manners of removing a manager. Removal, or a resolution approved by the affirmative vote of a

majority of the governors present, the president may remove a manager elected or appointed by the board, other than the treasurer.

- d. The articles of organization, the bylaws, or a member-control agreement may provide other manners of removing a manager.
- e. A removal as described in this subsection is without prejudice to any contractual rights of the manager.

**SECTION 35. AMENDMENT.** Subsection 1 of section 10-32-108 of the North Dakota Century Code is amended and reenacted as follows:

1. A limited liability company may, by affirmative vote of a majority of the governors present, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board considers expedient, and without member approval:
  - a. Sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the usual and regular course of its business;
  - b. Grant a security interest in all or substantially all of its property and assets whether or not in the usual and regular course of its business; or
  - c. Transfer any or all of its property to ~~a corporation~~ an organization all of the ~~shareownership interests~~ of which are owned, directly or indirectly through wholly owned organizations, by a limited liability company.

**SECTION 36. AMENDMENT.** Section 10-32-144 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-144. Foreign limited liability company - Revocation of certificate of authority.**

1. The certificate of authority of a foreign limited liability company to transact business in this state may be revoked by the secretary of state if:
  - a. The foreign limited liability company has failed to:
    - (1) Appoint and maintain a registered agent and registered office as provided in chapter 10-01.1; ~~or~~
    - (2) File in the office of the secretary of state any amendment to its application for a certificate of authority as ~~specified~~ provided in section 10-32-140;
    - (3) File in the office of the secretary of state any merger as provided in section 10-32-142; or
    - (4) File in the office of the secretary of state an application for certificate of withdrawal of its authority as provided in section 10-32-143 when the limited liability company's existence has expired or the limited liability company has been dissolved or terminated in the jurisdiction of organization; or

- b. A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the foreign limited liability company pursuant to this chapter.
2. Except for revocation of the certificate of authority for failure to file the annual report as provided in section 10-32-149, no certificate of authority of a foreign limited liability company may be revoked by the secretary of state unless:
  - a. The secretary has given the foreign limited liability company not less than sixty days' notice by mail addressed to its registered agent at the registered office in this state or, if the foreign limited liability company fails to appoint and maintain a registered agent in this state, addressed to its principal executive office; and
  - b. During the sixty-day period, the foreign limited liability company has failed to:
    - (1) File the report of change as provided in chapter 10-01.1 regarding the registered office or the registered agent;
    - (2) File any amendment; ~~or~~
    - (3) File any merger;
    - (4) File an application for withdrawal; or
    - (5) Correct the misrepresentation.
3. Upon the expiration of sixty days after the mailing of the notice, the authority of the foreign limited liability company to transact business in this state ceases. The secretary of state shall issue a notice of revocation and shall mail the notice to the registered agent at the registered office in this state or, if the foreign limited liability company failed to appoint and maintain a registered agent or a registered office in this state, then addressed to the principal executive office of the foreign limited liability company.

**SECTION 37. AMENDMENT.** Section 10-32-150 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-150. Secretary of state - Fees and charges.**

The secretary of state shall charge and collect for:

1. Filing articles of organization and issuing a certificate of organization, one hundred thirty-five dollars.
2. Filing articles of amendment, fifty dollars.
3. Filing ~~articles~~statement of correction, fifty dollars.
4. Filing restated articles of organization, one hundred twenty-five dollars.
5. Filing articles of conversion of a limited liability company, fifty dollars and:
  - a. If the organization resulting from the conversion will be a domestic organization governed by the laws of this state, then the fees provided by



- the governing laws to establish or register a new organization like the organization resulting from the conversion; or
- b. If the organization resulting from the conversion will be a foreign organization that will transact business in this state, then the fees provided by the governing laws to obtain a certificate of authority or register an organization like the organization resulting from the conversion.
6. Filing abandonment of conversion, fifty dollars.
  7. Filing articles of merger and issuing a certificate of merger, fifty dollars.
  8. Filing abandonment of merger or exchange, fifty dollars.
  9. Filing an application to reserve a name, ten dollars.
  10. Filing a notice of transfer of a reserved name, ten dollars.
  11. Filing a cancellation of reserved name, ten dollars.
  12. Filing a consent to use of name, ten dollars.
  13. Filing a statement of change of address of registered office or change of registered agent or both, or a statement of change of address of registered office by registered agent, the fee provided in section 10-01.1-03.
  14. Filing a resolution for the establishment of a class or series of membership interests, fifty dollars.
  15. Filing a notice of dissolution, ten dollars.
  16. Filing a statement of revocation of voluntary dissolution proceedings, ten dollars.
  17. Filing articles of dissolution and termination, twenty dollars.
  18. Filing an application of a foreign limited liability company for a certificate of authority to transact business in this state and issuing a certificate of authority, one hundred thirty-five dollars.
  19. Filing an amendment to the certificate of authority by a foreign limited liability company, fifty dollars.
  20. Filing a certificate of fact stating a merger of a foreign limited liability company holding a certificate of authority to transact business in this state, fifty dollars.
  21. Filing a certified statement of conversion of a foreign limited liability company, fifty dollars.
  22. Filing an application for withdrawal of a foreign limited liability company and issuing a certificate of withdrawal, twenty dollars.
  23. Filing an annual report of a limited liability company or foreign limited liability company, fifty dollars.

- a. The secretary of state shall charge and collect additional fees for late filing of the annual report as follows:
    - (1) After the date provided in subsection 3 of section 10-32-149, fifty dollars; and
    - (2) After the termination of the limited liability company, or the revocation of the certificate of authority of a foreign limited liability company, the reinstatement fee of one hundred ~~twenty five~~thirty-five dollars.
  - b. Fees paid to the secretary of state according to this subsection are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 10-32-149, or the annual report lacks sufficient payment as required by this subsection.
24. Filing any process, notice, or demand for service, the fee provided in section 10-01.1-03.
  25. Submitting any record for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the record.
  26. Filing any other statement or report of a limited liability company or foreign limited liability company, ten dollars.
  27. Furnishing a copy of any record, or paper relating to a limited liability company or a foreign limited liability company:
    - a. The fee provided in section 54-09-04 for copying a record; and
    - b. Five dollars for a search of records.
  28. Furnishing a certificate of good standing, existence, or authorization:
    - a. Fifteen dollars; and
    - b. Five dollars for a search of records.

**SECTION 38. AMENDMENT.** Subsection 5 of section 10-32-152 of the North Dakota Century Code is amended and reenacted as follows:

5. If the court order sought is one for reinstatement of a limited liability company that has been dissolved as provided in subsection 5 of section 10-32-149, or for reinstatement of the certificate of authority of a foreign limited liability company that has been revoked as provided in subsection 6 of section 10-32-149, then together with any other actions the court deems proper, any such order which reverses the decision of the secretary of state shall require the limited liability company or foreign limited liability company to:
  - a. File the most recent past-due annual report;
  - b. Pay the fees to the secretary of state for all past-due annual reports as provided in subsection ~~2623~~ of section 10-32-150; and
  - c. Pay the reinstatement fee to the secretary of state as provided in subsection ~~2623~~ of section 10-32-150.

**SECTION 39. AMENDMENT.** Section 10-32-153 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-153. Secretary of state - Certificates and certified copies to be received in evidence.**

1. All certificates issued by the secretary of state and all copies of records filed in accordance with this chapter, when certified by the secretary of state, ~~must~~may be taken and received in all courts, public offices, and official bodies as ~~prima facie~~ evidence of the facts therein stated.
2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to limited liability companies which would not appear from a certified copy of any of the foregoing records or certificates, ~~must~~may be taken and received in all courts, public offices, and official bodies as ~~prima facie~~ evidence of the existence or nonexistence of the facts stated therein.
3. Any certificate or certified copy issued by the secretary of state under this section may be created and disseminated as an electronic record with the same force and effect as if produced in a paper form.

**SECTION 40. AMENDMENT.** Subsection 27 of section 10-33-01 of the North Dakota Century Code is amended and reenacted as follows:

27. "Officer" means an individual who is ~~more than~~ eighteen years of age or more and who is:
  - a. Elected, appointed, or otherwise designated as ~~a~~the president, the treasurer and the secretary, however designated, or any other officer by the board or the members pursuant to section 10-33-49; or
  - b. ~~Considered~~Deemed elected as an officer pursuant to section 10-33-52.

**SECTION 41. AMENDMENT.** Subsections 3 and 4 of section 10-33-06 of the North Dakota Century Code are amended and reenacted as follows:

3. The following provisions govern a corporation unless modified either in the articles or bylaws:
  - a. A certain method must be used for amending the articles as provided in section 10-33-15;
  - b. Certain procedures apply to the adoption, amendment, or repeal of bylaws by the members as provided in section 10-33-26;
  - c. A director holds office for an indefinite term that expires upon the election of a successor as provided in section 10-33-30;
  - d. The term of a director filling a vacancy expires at the end of the term the director is filling as provided in section 10-33-30;
  - e. The compensation of directors is fixed by the board as provided in section 10-33-32;

- f. The method provided in section 10-33-36 or 10-33-37 must be used for removal of directors;
- g. The method provided in section 10-33-38 must be used for filling board vacancies;
- h. Board meetings must be held at least once per year and if the board fails to select a place for a board meeting, it must be held at the principal executive office as provided in subsection 1 of section 10-33-39;
- i. A director may call a board meeting, and the notice of the meeting need not state the purpose of the meeting as provided in subsection 3 of section 10-33-39;
- j. A majority of the board is a quorum as provided in section 10-33-41;
- k. The affirmative vote of the majority of directors present is required for board action as provided in section 10-33-42;
- l. A committee:
  - (1) Must consist of one or more persons, who need not be directors, appointed by the board as provided in section 10-33-44; and
  - (2) May create one or more subcommittees, each consisting of one or more members of the committee and may delegate to the subcommittee any or all of the authority of the committee as provided in subsection 7 of section 10-33-44;
- m. Unless the articles or bylaws or a resolution adopted by the board, and not inconsistent with the articles or bylaws, provides otherwise, the officers shall have the duties provided in section 10-33-50;
- n. The method provided in section 10-33-54 must be used for removal of officers;
- o. If not prohibited by the board from doing so, officers may delegate some or all of their duties and powers as provided in section 10-33-55;
- p. A corporation does not have members as provided in section 10-33-57;
- q. The board may determine the consideration required to admit members as provided in section 10-33-57;
- r. All members are entitled to vote and have equal rights and preferences in matters as provided in section 10-33-57;
- s. Memberships are nontransferable except as provided in section 10-33-59;
- t. A corporation with voting members must hold a regular meeting of voting members annually as provided in section 10-33-65;
- u. If a specific minimum notice period has not been fixed by law, then at least five days' notice is required for a meeting of members as provided in section 10-33-68;

- v. The board may fix a date up to fifty days before the date of a members' meeting as the date for determination of the members entitled to notice of and entitled to vote at the meeting as provided in section 10-33-68;
  - w. Each member with voting rights has one vote as provided in section 10-33-71;
  - x. The affirmative vote of the majority of members with voting rights present and entitled to vote is required for action of the members, unless this chapter or the articles or bylaws require a greater vote or voting by class as provided in section 10-33-72;
  - y. Members with voting rights may take action at a meeting by voice or ballot, by unanimous action without a meeting, by mailed ballot, or by electronic communication as provided in section 10-33-72;
  - z. The number of members required for a quorum is ten percent of the members entitled to vote as provided in section 10-33-76;
  - aa. The procedures provided in section 10-33-78 govern acceptance of member acts; and
  - bb. Indemnification of certain persons is required as provided in section 10-33-84.
4. The following provisions relating to the management or regulation of the affairs of a corporation may be included in the articles or, except for naming members of the first board, in the bylaws:
- a. The first board of directors may be named in the articles as provided in section 10-33-25;
  - b. Additional qualifications for directors may be imposed as provided in section 10-33-29;
  - c. Terms of directors may be staggered as provided in section 10-33-30;
  - d. The date, time, and place of board meetings may be fixed as provided in section 10-33-39;
  - e. Additional officers may be designated as provided in section 10-33-49;
  - f. Additional powers, rights, duties, and responsibilities may be given to officers as provided in section 10-33-50;
  - g. A method for filling vacant offices may be specified as provided in section 10-33-54;
  - h. Membership criteria and procedures for admission may be established as provided in section 10-33-57;
  - i. Membership terms may be fixed as provided in section 10-33-57;
  - j. A corporation may issue membership certificates or preferred or common shares as the board deems appropriate as provided in section 10-33-58;

- k. A corporation may levy dues, assessments, or fees on members as provided in section 10-33-60;
- l. A corporation may buy memberships as provided in section 10-33-63;
- m. A corporation may have delegates with some or all the authority of members as provided in section 10-33-64;
- n. The date, time, and place of regular member meetings or the place of special meetings may be fixed as provided in section 10-33-65;
- o. Certain persons may be authorized to call special meetings of members as provided in section 10-33-66;
- p. Notices of special member meetings may be required to contain certain information as provided in section 10-33-68;
- q. A larger than majority vote may be required for member action as provided in section 10-33-72;
- r. Members with voting rights may vote by proxy as provided in section 10-33-77; and
- s. Members with voting rights may enter into voting agreements as provided in section 10-33-79.

**SECTION 42. 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 or in any other language expressed in English 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 or implies that the corporation:
    - (1) Is incorporated for a purpose other than:
      - (a) A lawful nonprofit purpose for which a corporation may be incorporated under this chapter; or
      - (b) For a purpose stated in its articles; or
    - (2) May not be incorporated under this chapter.

- e. May not be the same as or deceptively similar to:
- (1) The name, whether foreign and authorized to conduct activities in this state or domestic unless there is filed with the articles a record that complies with subsection 2, of:
    - (a) Another corporation;
    - (b) A corporation incorporated or authorized to do business in this state under another provision of this code;
    - (c) A limited liability company;
    - (d) A limited partnership;
    - (e) A limited liability partnership; or
    - (f) A limited liability limited partnership;
  - (2) A name the right to which is, at the time of incorporation, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - (3) A fictitious name registered in the manner provided in chapter 45-11; ~~or~~
  - (4) A trade name registered in the manner provided in chapter 47-25; 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 another name for purposes of this chapter.
  3. If the secretary of state determines that a corporate name is "deceptively similar" to another name for purposes of this chapter, then the corporate name may not be used unless there is filed with the articles:
    - a. The written consent of the holder of the rights to the name the proposed name is determined to be deceptively similar to; or
    - b. A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.
  4. Subsection 3 does not affect the right of a corporation existing on August 1, 1997, or a foreign corporation authorized to do business in this state on that date to continue the use of its name.
  5. This section and section 10-33-11 do not:
    - a. Abrogate or limit:
      - (1) The law of unfair competition or unfair practices;
      - (2) Chapter 47-25;

- (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, or service marks; or
    - (4) Any other rights to the exclusive use of names or symbols; or
  - b. Derogate the common law or the principles of equity.
6. A domestic or foreign corporation that is the surviving organization in a merger with one or more other organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization including its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other organizations, if the other organization whose name is sought to be used:
  - a. Was incorporated, organized, formed, or registered under the laws of this state;
  - b. Is authorized to conduct activities or transact business in this state;
  - c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
  - e. Holds a trade name registered in the manner provided in chapter 47-25; 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 2. A corporation that cannot reacquire the use of its corporate name must adopt a new corporate name that complies with the provisions of this section:
  - a. By refiling articles of incorporation pursuant to section 10-33-08;
  - b. By amending pursuant to section 10-33-14; or
  - c. By reinstating pursuant to section 10-33-139.



9. Subject to section 10-33-126, this section applies to any foreign corporation transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.
10. An amendment that only changes the name of the corporation may be authorized by a resolution approved by the board and may, but need not, be submitted to and approved by the members as provided in section 10-33-15.
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 43. AMENDMENT.** Subsections 1, 2, and 3 of section 10-33-15 of the North Dakota Century Code are amended and reenacted as follows:

1. A majority of incorporators may amend the articles by written action if no directors are named in the original articles, if no directors have been elected, and if there are no members with voting rights. A majority of directors may amend the articles if there are no members with voting rights, if members with voting rights have authorized the board to amend the articles under subsection 3, or if the amendment merely restates the existing articles, as amended. Notice of the meeting and of the proposed amendment must be given to the board. An amendment restating the existing articles may, but need not, be submitted to and approved by the members with voting rights as provided in subsection 2.
2. Amendments to the articles must be approved by the affirmative vote of a majority of ~~the~~all directors and by the members with voting rights. If an amendment is initiated by the directors, proper notice of the proposed amendment must precede a ~~member~~ meeting of the members with voting rights at which the amendment will be considered and must include the substance of the proposed amendment. If an amendment is proposed and approved by the members with voting rights, ~~the~~those members may demand a special board meeting within fifty days for consideration of the proposed amendment if a regular board meeting would not occur within fifty days.
3.
  - a. The members with voting rights may authorize the board of directors, subject to subdivision c, to exercise from time to time the power of amendment of the articles without ~~member~~ approval of the members with voting rights.
  - b. When the members with voting rights have authorized the board of directors to amend the articles, the board of directors, by the affirmative vote of a majority ~~vote of all directors~~, unless the articles, bylaws, or the members' resolution authorizing the board action requires a greater vote, may amend the articles at a meeting of the board. Notice of the meeting and of the proposed amendment must be given to the board.
  - c. The members with voting rights ~~voting at a meeting duly called for the purpose~~ may prospectively revoke the authority of the board to exercise the power of the members to amend the articles at a meeting called for that purpose.

**SECTION 44. AMENDMENT.** Section 10-33-26 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-26. Bylaws.**

1. A corporation may, but need not, have bylaws. Bylaws may contain any provision relating to the management or regulation of the affairs of the corporation consistent with law or the articles, including:
  - a. The number of directors, and the qualifications, manner of election, powers, duties, and compensation, if any, of directors;
  - b. The qualifications of members;
  - c. Different classes of membership;
  - d. The manner of admission, withdrawal, suspension, and expulsion of members;
  - e. Property, voting, and other rights and privileges of members;
  - f. The appointment and authority of committees;
  - g. The appointment or election, duties, compensation, and tenure of officers;
  - h. The time, place, and manner of calling, conducting, and giving notice of member, board, and committee meetings, or of conducting mail ballots;
  - i. The making of reports and financial statements to members; or
  - j. The number establishing a quorum for meetings of members and the board.
2. ~~Initial~~Unless reserved by the articles to members with voting rights, initial bylaws may be adopted by a majority of the incorporators or by the first board pursuant to section 10-33-25. ~~Unless reserved by the articles to the members with voting rights, the power to adopt, amend, or repeal the bylaws is vested in the board. The power of the board is subject to the power of the members with voting rights exercisable in the manner provided in subsection 3 to adopt, amend, or repeal bylaws adopted, amended, or repealed by the board. After the adoption of the initial bylaws and if there are members with voting rights, the board may not adopt, amend, or repeal a bylaw fixing~~
3. The bylaws may be amended in the manner provided in the articles or bylaws.
  - a. In the absence of such a provision, the following bylaws amendments are subject to approval by the members with voting rights:
    - (1) Fixing a quorum for meetings of members, ~~prescribing~~;
    - (2) Prescribing procedures for ~~removing~~:
      - (a) Removing directors ~~or filling~~;
      - (b) Filling vacancies in the board, ~~or fixing~~; and
      - (c) Fixing the number of directors or their classifications, qualifications, or terms of office, ~~but may adopt or amend a bylaw to increase the number of directors. A bylaw amendment to increase or decrease~~

~~the vote required for a member action must be approved by the members.;~~

(3) Removing or adding members; or

(4) Increasing or decreasing the vote required for member action.

b. The board may adopt or amend a bylaw provision to increase the number of directors with the approval of the members with voting rights.

~~3-4.~~ Unless the articles or bylaws provide otherwise, at least fifty members with voting rights or ten percent of the members with voting rights, whichever is less, may propose a resolution for action by the members to adopt, amend, or repeal bylaws adopted, amended, or repealed by the board.

a. The resolution must contain the provisions proposed for adoption, amendment, or repeal.

b. The limitations and procedures for submitting, considering, and adopting the resolution are the same as provided in section 10-33-15, for amendment of the articles, except that board approval is not required.

~~e. The articles or bylaws may impose different or additional requirements for the members to adopt, amend, or repeal the bylaws.~~

**SECTION 45. AMENDMENT.** Section 10-33-28 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-28. Number of directors.**

With respect to the number of directors:

1. The board must consist of three or more directors, with the number specified in or fixed in accordance with the articles or bylaws. However, if the corporation has either one or two members with voting rights, the number of directors may be less than three but not less than the number of members with voting rights.

2. The number of directors may be increased or, subject to sections 10-33-36 and 10-33-37, decreased at any time by amendment to or in the manner provided in the articles or bylaws.

3. Notwithstanding section 10-33-38, if the power to elect or appoint directors is vested in the board of directors and if the number of directors falls below three, or such greater minimum number set forth in the articles or bylaws, then a majority of the directors in office may appoint or elect the number of additional directors necessary to increase the board to three directors or such greater minimum set forth in the articles or bylaws.

**SECTION 46. AMENDMENT.** Subsection 2 of section 10-33-38 of the North Dakota Century Code is amended and reenacted as follows:

2. If a vacant office was held by a director elected by a class, chapter, or other organizational unit or by region or other geographic grouping, only members with voting rights of the class, chapter, unit, or grouping are entitled to vote to fill the vacancy.

**SECTION 47. AMENDMENT.** Section 10-33-39 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-39. Board meetings.**

1. Meetings of the board may be held from time to time as provided in the articles or bylaws at any place within or without the state that the board may select or by any means described in subsection 2.
  - a. Unless the articles or bylaws provide otherwise, a meeting of the board must be held at least once per year.
  - b. If the articles, bylaws, or board fails to select a place or method for selecting a place for a meeting, the meeting must be held at the principal executive office.
  - c. ~~The board may determine under subsection 2 that a meeting of the board shall be held solely by means of remote communication.~~
  - d. Participation in a meeting by a means set forth in subsection 2 constitutes presence in person at the meeting.
2. Any meeting among directors may be conducted:
  - a. Solely by one or more means of remote communication through which all of the directors may participate in the meeting:
    - (1) If the notice required by subsection 3 is given for the meeting; and
    - (2) If the number of directors participating in the meeting is sufficient to constitute a quorum at a meeting.
  - b. By means of conference telephone or, if authorized by the board, by such other means of remote communication, in each case through which that director, other directors so participating, and all directors physically present at the meeting participate with each other during the meeting.
3. Unless the articles or bylaws provide for a different time period, a director may call a board meeting by giving at least ten days' notice or, in the case of organizational meetings pursuant to subsection 2 of section 10-33-25, at least three days' notice, to all directors of the date, time, and place of the meeting.
  - a. The notice must contain the substance of any proposed amendment to the articles but otherwise need not state the purpose of the meeting unless the articles or bylaws require it.
  - b. Any notice to a director given under any provision of this chapter, the articles, or the bylaws by a form of electronic communication consented to by the director to whom the notice is given is effective when given.
  - c. Consent by a director to notice given by electronic communication may be given in writing or by authenticated electronic communication. Any consent so given may be relied upon until revoked by the director, provided that no revocation affects the validity of any notice given before receipt of revocation of the consent.

4. If the date, time, and place of a board meeting have been provided in the articles or bylaws, or announced at a previous meeting of the board, no notice is required. Notice of an adjourned meeting need not be given other than by announcement at the meeting at which adjournment is taken.
5. A director may waive notice of a meeting of the board. A waiver of notice by a director entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, by authenticated electronic communication, or by attendance. Attendance by a director at a meeting is a waiver of notice of that meeting, except when the director objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate in the meeting after the objection.

**SECTION 48. AMENDMENT.** Section 10-33-43 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-43. Action without meeting by directors.**

1. An action required or permitted to be taken at a board meeting may be taken by written action signed, or consented to by authenticated electronic communication, by all of the directors. If the articles so provide, any action, other than an action requiring ~~member~~ approval of members with voting rights, may be taken by written action signed, or consented to by authenticated electronic communication, by the number of directors that would be required to take the same action at a meeting of the board at which all directors were present.
2. The written action is effective when signed, or consented to by authenticated electronic communication, by the required number of directors, unless a different effective time is provided in the written action.
3. When written action is permitted to be taken by less than all directors, all directors must be notified immediately of its text and effective date. Failure to provide the notice does not invalidate the written action. A director who does not sign or consent to the written action has no liability for the action or actions taken thereby.

**SECTION 49. AMENDMENT.** Subsection 2 of section 10-33-44 of the North Dakota Century Code is amended and reenacted as follows:

2. Committee members must be individuals. Unless the articles or bylaws provide for a different membership or manner of appointment, a committee must consist of one or more persons, who need not be directors, appointed by the ~~board~~ affirmative vote of a majority of the directors present.

**SECTION 50. AMENDMENT.** Subsection 2 of section 10-33-46 of the North Dakota Century Code is amended and reenacted as follows:

2. A contract or transaction described in subsection 1 is not void or voidable if:
  - a. The contract or transaction was, and the person asserting the validity of the contract or transaction has the burden of establishing that the contract or transaction was, fair and reasonable as to the corporation when it was authorized, approved, or ratified;

- b. The material facts as to the contract or transaction and as to the director's interest are fully disclosed or known to the members and the contract or transaction is approved in good faith by two-thirds of the members entitled to vote, not counting any vote that the interested director might otherwise have, or the unanimous affirmative vote of all members, whether or not entitled to vote;
- c. The material facts as to the contract or transaction and as to the director's interest are fully disclosed or known to the board or a committee, and the board or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of directors or committee members currently holding office. However, the interested director or directors may not vote and are not considered for purposes of a quorum. If as a result the number of remaining directors is not sufficient to reach a quorum, then a quorum for the purpose of considering the contract or transaction is the number of remaining directors or committee members, not counting any vote that the interested director might otherwise have, and not counting the director in determining the presence of a quorum; or
- d. The contract or transaction is a merger or consolidation described in section 10-33-85.

**SECTION 51. AMENDMENT.** Section 10-33-49 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-49. Officers.**

1. The officers of a corporation must be individuals who are eighteen years of age or more ~~and must include~~ exercising the functions of the offices and:
  - a. ~~Must include~~ a president and a secretary. ~~The officers of the corporation may, however designated; and~~
  - b. ~~May~~ also include a treasurer, one or more vice presidents, and any other officers ~~or agents as, however designated, as~~ may be prescribed by the bylaws. ~~Each officer must be elected by the board at the time and in the manner as may be provided in the bylaws unless the articles or bylaws provide the members may elect the officers.~~
2. ~~Unless the articles or the bylaws provide that the members with voting rights may elect the officers:~~
  - a. ~~Each officer must be elected by the board at the time and in the manner as may be provided in the bylaws; or~~
  - b. ~~To the extent authorized in the articles, the bylaws, or a resolution approved by the affirmative vote of a majority of the directors present, the president may appoint one or more officers, other than the treasurer.~~
3. ~~Unless otherwise provided, president shall mean chief executive officer and treasurer shall mean chief financial officer.~~

**SECTION 52. AMENDMENT.** Section 10-33-51 of the North Dakota Century Code is amended and reenacted as follows:

### 10-33-51. Multiple offices.

~~Any~~Unless the articles or bylaws provide otherwise, any number of offices or functions of those offices may be held or exercised by the same individual. If a record must be signed by individuals holding different offices or functions and an individual holds or exercises more than one of those offices or functions, that individual may sign the record in more than one capacity, but only if the record indicates each capacity in which the individual signs.

**SECTION 53. AMENDMENT.** Section 10-33-52 of the North Dakota Century Code is amended and reenacted as follows:

### 10-33-52. Officers deemed elected.

In the absence of an election or appointment of officers by the board or the members with voting rights, the individual or individuals exercising the functions of the principal officers of the corporation are deemed to have been elected to those offices.

**SECTION 54. AMENDMENT.** Subsection 2 of section 10-33-54 of the North Dakota Century Code is amended and reenacted as follows:

#### 2. With respect to removal:

- a. Except as otherwise provided in the articles or bylaws, an officer may be removed at any time, with or without cause, by a resolution adopted by the board or by the members with voting rights, whichever elected or appointed the officer. ~~The~~
- b. An officer appointed by the president may also be removed at any time, with or without cause, by the president.
- c. To the extent authorized in the articles, the bylaws, or a resolution approved by the affirmative vote of a majority of the directors present, the president of a corporation may remove an officer elected or appointed by the board, other than the treasurer.
- d. The articles or the bylaws may provide other manners of removing an officer.
- e. A removal as described in this subsection is without prejudice to any contractual rights of the officer.

**SECTION 55. AMENDMENT.** Subsection 11 of section 10-33-84 of the North Dakota Century Code is amended and reenacted as follows:

11. ~~This~~Nothing in this section does not shall be construed to limit the power of the corporation to indemnify persons other than a director, an officer, an employee, or a member of a committee of the board by contract or otherwise.

**SECTION 56. AMENDMENT.** Subsection 2 of section 10-33-87 of the North Dakota Century Code is amended and reenacted as follows:

2. If a constituent corporation has members with voting rights with respect to mergers and consolidations as required by section 10-33-42, the board of directors of the corporation shall adopt a resolution by the affirmative vote of a majority ~~vote~~ of all directors approving a proposed plan of merger or

consolidation and directing that the plan be submitted to a vote at a meeting of the members with voting rights. Notice of the meeting must be given to ~~the member~~each member with voting rights, accompanied by a copy or summary of the proposed plan. Unless the articles or bylaws require a greater vote, the plan of merger or consolidation is adopted upon receiving the affirmative vote of a majority of the members ~~who vote upon the proposed plan with voting rights~~voting on the action.

**SECTION 57. AMENDMENT.** Section 10-33-94 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-94. Transfer of assets - When permitted.**

1. A corporation may sell, lease, transfer, dispose of, or grant a security interest in all or substantially all of the property and assets only as provided in this section.
2. Unless otherwise provided in its articles or bylaws, a corporation, by affirmative vote of ~~the board~~a majority of directors, may sell, lease, transfer, or dispose of all or substantially all of its property and assets in the usual and regular course of its activities ~~and, subject to subsection 1 of section 10-33-82, grant a security interest in all or substantially all of its property and assets whether or not in the usual and regular course of its activities~~, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board considers expedient, ~~in which case no member approval is required.~~  
Member approval is not required under this subsection.
- 2-3. A corporation, by affirmative vote of ~~the board~~a majority of all directors, may sell, lease, transfer, or dispose of all or substantially all of its property and assets, including its goodwill, not in the usual and regular course of its activities, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board considers expedient, ~~when approved at a regular or special meeting of the members by the affirmative vote of the majority of the members with voting rights.~~
  - a. If there are members with voting rights, then the sale, lease, transfer, or disposition must be submitted to the members under subdivision c. If there are not members with voting rights, then member approval is not required.
  - b. ~~Notice~~Written notice of the meeting must be given to ~~the member~~each member with voting rights within the time and in the manner provided in section 10-33-68 for notice of meetings of members.
  - c. ~~The~~Whether the meeting is an annual or special meeting, the notice must state that a purpose of the meeting is to consider the sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the corporation. The sale, lease, transfer, or disposition must be approved at a regular or special meeting of the members by the affirmative vote of the majority of the members with voting rights voting on the action.
  - d. Unless otherwise provided in its articles or bylaws and subject to subsection 1 of section 10-33-82, a corporation may, by the affirmative vote of a majority of directors, grant a security interest in all or substantially all of its property and assets whether in the usual and regular course of its



activities, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property as the board considers expedient. Member approval is not required under this subsection.

- ~~3-4.~~ If applicable, a corporation shall comply with sections 10-33-122 and 10-33-144 before selling, leasing, transferring, or disposing of all or substantially all of the corporation's assets under this section.
- 4-5. Confirmatory deeds, assignments, or similar instruments to evidence a sale, lease, transfer, or other disposition may be signed and delivered at any time in the name of the transferor by its current officers or, if the corporation no longer exists, by its last officers.
- 5-6. The transferee is liable for the debts, obligations, and liabilities of the transferor only to the extent provided in the contract or agreement between the transferee and the transferor or to the extent provided by this chapter or other statutes of this state.

**SECTION 58. AMENDMENT.** Subsection 3 of section 10-33-98 of the North Dakota Century Code is amended and reenacted as follows:

3. With respect to approval by members with voting rights:
- a. Written notice:
- (1) Must be given to each member with voting rights, within the time and in the manner provided in section 10-33-68 for notice of meetings of members; and
  - (2) Whether the meeting is a regular or a special meeting, must state that a purpose of the meeting is to consider dissolving the corporation.
- b. The proposed dissolution must be submitted for approval at a meeting of members. If the proposed dissolution is approved by the members with voting rights, the dissolution must be started.

**SECTION 59. AMENDMENT.** Section 10-33-134 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-134. Foreign corporation - Revocation of certificate of authority.**

1. The certificate of authority of a foreign corporation to conduct activities in this state may be revoked by the secretary of state if:
- a. The foreign corporation has failed to:
- (1) Appoint and maintain a registered agent and registered office as provided in chapter 10-01.1; ~~or~~
  - (2) File in the office of the secretary of state any amendment to its application for a certificate of authority as ~~specified~~provided in section 10-33-130;
  - (3) File in the office of the secretary of state any merger as provided in section 10-33-132; or

- (4) File in the office of the secretary of state an application for certificate of withdrawal of its authority as provided in section 10-33-133 when the corporation's existence has expired or the corporation has been dissolved in the jurisdiction of incorporation; or
- b. A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the foreign corporation pursuant to this chapter.
2. Except revocation of the certificate of authority for failure to file the annual report as provided in section 10-33-139, no certificate of authority of a foreign corporation may be revoked by the secretary of state unless:
    - a. The secretary of state has given the foreign corporation not less than sixty days' notice by mail addressed to its registered agent at the registered office in this state or, if the foreign corporation fails to appoint and maintain a registered agent in this state, then addressed to its principal executive office; and
    - b. During the sixty-day period, the foreign corporation has failed to:
      - (1) File the report of change as provided in chapter 10-01.1 regarding the registered office or the registered agent;
      - (2) File any amendment; or
      - (3) Correct the misrepresentation.
  3. Upon the expiration of sixty days after the mailing of the notice, the authority of the foreign corporation to conduct activities in this state ceases. The secretary of state shall issue a notice of revocation and shall mail the notice to the registered agent at the registered office in this state or, if the foreign corporation failed to appoint and maintain a registered agent or a registered office in this state, then addressed to the principal executive office of the foreign corporation.

**SECTION 60. AMENDMENT.** Subsection 1 of section 10-33-140 of the North Dakota Century Code is amended and reenacted as follows:

1. The secretary of state shall charge and collect for:
  - a. Filing articles of incorporation and issuing a certificate of incorporation, forty dollars.
  - b. Filing articles of amendment, twenty dollars.
  - c. Filing ~~articles~~statement of correction, twenty dollars.
  - d. Filing restated articles of incorporation, thirty dollars.
  - e. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, fifty dollars.
  - f. Filing an intent to dissolve, ten dollars.
  - g. Filing articles of dissolution, twenty dollars.

- h. Filing a statement of change of address of registered office or change of registered agent, or both, the fee provided in section 10-01.1-03.
- i. Filing an application to reserve a corporate name, ten dollars.
- j. Filing a notice of transfer of a reserved corporate name, ten dollars.
- k. Filing a cancellation of reserved corporate name, ten dollars.
- l. Filing a consent to use of a deceptively similar name, ten dollars.
- m. Filing an application of a foreign corporation for a certificate of authority to conduct affairs in this state and issuing a certificate of authority, fifty dollars.
- n. Filing an application of a foreign corporation for an amended certificate of authority, forty dollars.
- o. Filing a certified statement of merger of a foreign corporation holding a certificate of authority to conduct activities in this state, fifty dollars.
- p. Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, twenty dollars.
- q. Filing an annual report of a domestic or foreign corporation, ten dollars.
  - (1) The secretary of state shall charge and collect additional fees for late filing of the annual report:
    - (a) After the date provided in subsection 3 of section 10-33-139, five dollars; and
    - (b) After the dissolution of a corporation, or the revocation of the certificate of authority of a foreign corporation, the reinstatement fee of forty dollars.
  - (2) Fees paid to the secretary of state according to this subdivision are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 10-33-139, or the annual report lacks sufficient payment as required by this subdivision.
- r. Submitting any record for approval before the actual time of submission for filing, one-half of the fee provided in this subsection for filing the record.
- s. Filing any other statement of a domestic or foreign corporation, ten dollars.

**SECTION 61. AMENDMENT.** Section 10-33-142 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-142. Secretary of state - Evidence.**

1. All certificates issued by the secretary of state and all copies of records filed in accordance with this chapter, when certified by the secretary of state, ~~must~~**may** be taken and received in all courts, public offices, and official bodies as ~~prima facie~~ evidence of the facts stated.

2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing records or certificates, ~~must~~may be taken and received in all courts, public offices, and official bodies as ~~prima facie~~ evidence of the existence or nonexistence of the facts stated.
3. Any certificate or certified copy issued by the secretary of state under this section may be created and disseminated as an electronic record with the same force and effect as if produced in a paper form.

**SECTION 62. AMENDMENT.** Section 10-35-33 of the North Dakota Century Code is amended and reenacted as follows:

**10-35-33. Funds received.**

~~Ten~~Twenty percent of the fees received by the secretary of state for filing records of a publicly traded corporation as provided for in section 10-19.1-147 or this chapter must be deposited in the secretary of state's general services operating fund to pay the cost to administer this chapter.

**SECTION 63. 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 or in another language expressed in English 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 any partner.
  - 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 or implies that 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:
- (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, 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - (3) A fictitious name registered in the manner provided in chapter 45-11; or
  - (4) A trade name registered in the manner provided in chapter 47-25; 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 another name for purposes of this chapter.
  3. If the secretary of state determines a limited partnership name is deceptively similar to 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; 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, 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - d. Holds a fictitious name registered in the manner provided in chapter 45-11; ~~or~~
  - e. Holds a trade name registered in the manner provided in chapter 47-25; 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 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 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 64. AMENDMENT.** Section 45-10.2-85 of the North Dakota Century Code is amended and reenacted as follows:

**45-10.2-85. Foreign limited partnership - Cancellation of certificate of authority - Effect of failure to have certificate.**

1. In order to cancel its certificate of authority to transact business in this state, a foreign limited partnership must deliver to the secretary of state for filing a:
  - a. A certified notice of cancellation duly authenticated by the proper officer of the state or country where the cancellation was effected;
  - b. A certified statement of dissolution duly authenticated by the proper officer of the state or country where the dissolution was effected; or
  - c. A statement of withdrawal signed by a general partner.

The certificate is canceled when the notice of cancellation, statement of dissolution, or statement of withdrawal becomes effective under section 45-10.2-27.

2. A foreign limited partnership transacting business in this state may not maintain an action or proceeding in this state unless it has a certificate of authority to transact business in this state.
3. The failure of a foreign limited partnership to have a certificate of authority to transact business in this state does not impair the validity of a contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending an action or proceeding in this state.
4. A partner of a foreign limited partnership is not liable for the obligations of the foreign limited partnership solely by reason that the foreign limited partnership has transacted business in this state without a certificate of authority.
5. If a foreign limited partnership transacts business in this state without a certificate of authority or cancels its certificate of authority, then it appoints the secretary of state as its agent for service of process for rights of action arising out of the transaction of business in this state.
6. A foreign limited partnership that transacts business in this state without a certificate of authority is liable to the state for the years or parts of years during which the foreign limited partnership transacted business in this state without the certificate of authority in an amount equal to all fees that would have been imposed by this chapter upon that foreign limited partnership had the foreign limited partnership duly obtained a certificate of authority, filed all reports required by this chapter, and paid all penalties imposed by this chapter. The attorney general shall bring proceedings to recover all amounts due this state under this section.
7. A foreign limited partnership that transacts business in this state without a certificate of authority is subject to a civil penalty, payable to the state, not to exceed five thousand dollars. Each general partner and each agent who

authorizes, directs, or participates in the transaction of business in this state on behalf of a foreign limited partnership that has not obtained a certificate of authority is subject to a civil penalty, payable to the state, not to exceed one thousand dollars.

8. The civil penalties set forth in subsection 7 may be recovered in an action brought within the district court of Burleigh County by the attorney general. Upon a finding by the court that a foreign limited partnership or any of the general partners or agents of the foreign limited partnership have transacted business in this state in violation of this chapter, the court shall issue, in addition to the imposition of a civil penalty, an injunction restraining the further transaction of the business of the foreign limited partnership and further exercise of any rights and privileges by the foreign limited partnership in this state. The foreign limited partnership must be enjoined from transacting business in this state until all civil penalties plus any interest and court costs that the court may assess have been paid and until the foreign limited partnership has otherwise complied with the provisions of this chapter.

**SECTION 65. AMENDMENT.** Section 45-10.2-87 of the North Dakota Century Code is amended and reenacted as follows:

**45-10.2-87. Foreign limited partnership - Revocation of certificate of authority.**

1. The certificate of authority of a foreign limited partnership to transact business in this state may be revoked by the secretary of state if:
  - a. The foreign limited partnership has failed to:
    - (1) Appoint and maintain a 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;
    - (2) Maintain the registration of a general partner as required in section 45-10.2-16;
    - (3) File a report upon any change in the address of its principal executive office; or
    - (4) File in the office of the secretary of state any amendment to its application for certificate of authority as ~~specified~~provided in section 45-10.2-81;
    - (5) File in the office of the secretary of state any merger as provided in section 45-10.2-83; or
    - (6) File in the office of the secretary of state a cancellation as provided in section 45-10.2-85 when the limited partnership's existence has expired or the limited partnership has dissolved or ceased to exist in the jurisdiction of organization; or
  - b. A misrepresentation has been made of any material matter in an application, report, affidavit, or other record submitted by the foreign limited partnership pursuant to this chapter.



2. Except for revocation of the certificate of authority for failure to file the annual report as provided in section 45-10.1-108, no certificate of authority may be revoked by the secretary of state unless:
  - a. The secretary has given the foreign limited partnership at least sixty days' notice by mail addressed to its registered agent at the registered office in this state or if the foreign limited partnership fails to appoint and maintain a registered agent in this state, then addressed to its principal executive office; and
  - b. During the sixty-day period, the foreign limited partnership has failed to file:
    - (1) File the report of change as provided in chapter 10-01.1 regarding the registered office or the registered agent; ~~to~~
    - (2) To register a general partner as required by section 45-10.2-16; ~~to~~
    - (3) To file any amendment, merger, or cancellation; or ~~to~~
    - (4) To correct the misrepresentation.
3. Upon the expiration of sixty days after the mailing of the notice:
  - a. The authority of the foreign limited partnership to transact business in this state ceases; and
  - b. The secretary of state shall issue a notice of revocation and shall mail the notice to the registered office of the foreign limited partnership, or if the foreign limited partnership has failed to maintain a registered office, then to its principal executive office.

**SECTION 66. AMENDMENT.** Subsection 15 of section 45-10.2-109 of the North Dakota Century Code is amended and reenacted as follows:

15. Filing a certificate of authority of foreign limited partnership, one hundred ten dollars.

**SECTION 67. AMENDMENT.** Section 45-10.2-112 of the North Dakota Century Code is amended and reenacted as follows:

**45-10.2-112. Secretary of state - Certificates and certified copies to be received in evidence.**

1. All copies of records filed in accordance with this chapter, when certified by the secretary of state, ~~must~~may be taken and received in all courts, public offices, and official bodies as ~~prima facie~~ evidence of the facts stated.
2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to limited partnerships or foreign limited partnerships which would not appear from a certified copy of any of the foregoing records or certificates, ~~must~~may be taken and received in all courts, public offices, and official bodies as ~~prima facie~~ evidence of the existence or nonexistence of the facts stated.

3. Any certificate or certified copy issued by the secretary of state under this section may be created and disseminated as an electronic record with the same force and effect as if produced in a paper form.

**SECTION 68.** Section 45-21-04.3 of the North Dakota Century Code is created and enacted as follows:

**45-21-04.3. Foreign partnership - Conversion of foreign partnership authorized to transact business in this state.**

If a foreign partnership transacting business in this state converts to another organization permitted by its governing statute, and the converted organization will continue to transact business in this state, within thirty days after the conversion becomes effective, the newly created organization resulting from the conversion shall:

1. File with the secretary of state a certified statement of conversion duly authenticated by the proper officer of the jurisdiction in which the statutory conversion was effected; and
2. Shall obtain a certificate of authority or applicable registration in accordance with the North Dakota governing statute applicable to the converted organization.

**SECTION 69. AMENDMENT.** Subsection 3 of section 45-22-03 of the North Dakota Century Code is amended and reenacted as follows:

3. A registration, signed by a managing partner, must contain:
  - a. With respect to a domestic limited liability partnership:
    - (1) The name of the domestic limited liability partnership.
    - (2) The nature of the business to be transacted in this state.
    - (3) A statement indicating whether the limited liability partnership will be engaged in farming or ranching in this state or owning or leasing land in this state which is used for farming or ranching.
    - (4) The address of the principal executive office of the domestic limited liability partnership.
    - (5) The name of the registered agent of the domestic limited liability partnership as provided in chapter 10-01.1 and, if a noncommercial registered agent, the address of that noncommercial registered agent in this state.
    - (6) The name and address of each managing partner and, if the limited liability partnership will be engaged in farming or ranching in this state or owning or leasing land in this state which is used for farming or ranching, then the names and addresses of all partners.
    - (7) A statement that the partnership elects to be a limited liability partnership.
    - (8) A deferred effective date, if any.

- b. With respect to a foreign limited liability partnership:
- (1) The name of the foreign limited liability partnership and, if different, the name under which the foreign limited liability partnership proposes to transact business in this state.
  - (2) The jurisdiction of origin.
  - (3) The date on which the foreign limited liability partnership expires in the jurisdiction of origin.
  - (4) The nature of the business to be transacted in this state.
  - (5) A statement indicating whether the foreign limited liability partnership will be engaged in farming or ranching in this state or owning or leasing land in this state which is used for farming or ranching.
  - (6) The address of the principal executive office of the foreign limited liability partnership.
  - (7) The name of the registered agent of the foreign limited liability partnership as provided in chapter 10-01.1 and, if a noncommercial registered agent, the address of that registered agent in this state.
  - (8) The name and address of each managing partner and, if the foreign limited liability partnership will be engaged in farming or ranching in this state or owning or leasing land in this state which is used for farming or ranching, then the names and addresses of all partners.
  - (9) An acknowledgment that the status of the foreign limited liability partnership in this state will automatically expire unless the foreign limited liability partnership continuously maintains limited liability partnership status in the jurisdiction of origin.
- c. The registration must be accompanied by payment of the fees provided in section 45-22-22 together with a certificate of good standing or certificate of existence authenticated by the registering officer of the state or country where the foreign limited liability partnership is originally registered ~~and the consent of the designated registered agent for service of process to serve in that capacity.~~

**SECTION 70. 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 or in any other language, expressed in English 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 or that implies that 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:
    - (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, 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
    - (3) A fictitious name registered in the manner provided in chapter 45-11; ~~or~~
    - (4) A trade name registered in the manner provided in chapter 47-25; 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 another name for purposes of this chapter.
  3. If the secretary of state determines that a limited liability partnership name is deceptively similar to 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; 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, 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
  - e. Holds a trade name registered in the manner provided in chapter 47-25; 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 71. AMENDMENT.** Section 45-22-16 of the North Dakota Century Code is amended and reenacted as follows:

**45-22-16. Revocation of registration.**

1. The registration of a limited liability partnership may be revoked by the secretary of state if:
  - a. The limited liability partnership fails:
    - (1) To appoint and maintain a registered agent and registered office as provided in chapter 10-01.1; ~~or~~
    - (2) To file any amendment to the limited liability partnership's registration required to be filed pursuant to subdivision b or c of subsection 4 of section 45-22-03;
    - (3) Fails to file a merger as required to be filed pursuant to subdivision d of subsection 4 of section 45-22-03; or

- (4) Fails to file a withdrawal statement or cancellation of its registration if the limited liability partnership's existence expires, it is dissolved, or ceases to exist in the jurisdiction of origin.
- b. An intentional misrepresentation is made in any material matter in any registration, report, affidavit, or other document submitted by the limited liability partnership pursuant to this chapter.
2. Except for revocation of the registration for failure to file the annual report as provided in section 45-22-21.1, the secretary of state may not revoke the registration of a limited liability partnership unless:
    - a. The secretary of state gave the limited liability partnership at least sixty days' notice of the reason for the pending revocation by mail addressed to the limited liability partnership's registered agent at the registered office or, if the limited liability partnership fails to appoint and maintain a registered agent in this state, by mail addressed to the limited liability partnership's principal executive office; and
    - b. During the sixty-day period, the limited liability partnership fails:
      - (1) To appoint and maintain a registered agent as provided in chapter 10-01.1;
      - (2) To file the report of change regarding the name or business address of the registered agent;
      - (3) To file any amendment to the limited liability partnership's registration required to be filed pursuant to subdivision b or c of subsection 4 of section 45-22-03; or
      - (4) To correct the misrepresentation.
  3. Upon the expiration of the sixty-day period without the limited liability partnership curing the reason for the pending revocation set forth in the notice, the registration is revoked. The secretary of state shall note the revocation in the records of the secretary of state and shall give notice of the revocation to the limited liability partnership. Notice by the secretary of state must be mailed to the last registered agent at the last registered office. If the limited liability partnership ~~fails failed~~ to appoint and maintain a registered office in this state, the notice must be mailed to the limited liability partnership's principal executive office.

**SECTION 72. AMENDMENT.** Section 45-22-24 of the North Dakota Century Code is amended and reenacted as follows:

**45-22-24. Certificates and certified copies to be received in evidence.**

1. All copies of documents filed in accordance with this chapter, when certified by the secretary of state, ~~must~~ may be taken and received in all courts, public offices, and official bodies as ~~prima facie~~ evidence of the facts stated.
2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to domestic limited liability partnerships or foreign limited liability partnerships which would not appear from a certified copy of any of the foregoing documents or certificates,

~~must~~may be taken and received in all courts, public offices, and official bodies as ~~prima facie~~ evidence of the existence or nonexistence of the facts stated.

3. Any certificate or certified copy issued by the secretary of state under this section may be created and disseminated as an electronic record with the same force and effect as if produced in a paper form.

**SECTION 73. 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 ~~or in another language expressed in English~~ 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 any partner.
  - d. May not contain the word "corporation", "company", "incorporated", "limited liability company", "limited liability partnership", or any abbreviation of these words.
  - e. May not contain a word or phrase that indicates or that implies that 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:
    - (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, 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - (3) A fictitious name registered in the manner provided in chapter 45-11; ~~or~~
  - (4) A trade name registered in the manner provided in chapter 47-25; 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 another name for purposes of this chapter.
  3. If the secretary of state determines a limited liability limited partnership name is deceptively similar to 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; 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, 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - d. Holds a fictitious name registered in the manner provided in chapter 45-11;  
or
  - e. Holds a trade name registered in the manner provided in chapter 47-25; 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 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.

## CHAPTER 88

### HOUSE BILL NO. 1161

(Representative Keiser)

AN ACT to amend and reenact section 10-30.5-12 of the North Dakota Century Code, relating to entrepreneurship center awards.

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

**SECTION 1. AMENDMENT.** Section 10-30.5-12 of the North Dakota Century Code is amended and reenacted as follows:

#### **10-30.5-12. (Effective through July 31, 2015) Entrepreneurship awards.**

1. The corporation shall administer an entrepreneurship award program that provides funding awards to entrepreneurial centers and to entrepreneurs.
2. The following provisions apply to entrepreneurial center awards:
  - a. An applicant must be an entrepreneurial center certified by the department of commerce. In certifying an entrepreneurial center, the department shall consider whether the center provides business incubator services such as mentors, shared services, and relationships with educational institutions. An entrepreneurial center may not be a state entity or an institution under the control of the state board of higher education.
  - b. An award may not exceed ~~fifty~~<sup>sixty</sup> thousand dollars. An entrepreneurial center may not qualify for more than one award per year and may not receive more than five awards.
  - c. Before funds are distributed to a center under this subsection, the center shall provide the corporation with detailed documentation of the availability of one dollar of nonstate matching funds for each dollar of state funds distributed under this subsection. Matching funds must be cash and may not be in-kind assets.
  - d. If during the twelve months preceding the application for an award under this subsection, an entrepreneurial center was awarded state funding from any other source, the maximum award under this subsection must be decreased dollar for dollar for every dollar of other state funds awarded. This subdivision does not apply to state funds an entrepreneurial center receives as a fiscal agent for an identified third party as part of a contractual agreement.
  - e. As a term of receipt of an award under this subsection, an entrepreneurial center shall pay back the funds awarded under this subsection. The payback schedule must be based on the center's ability to pay back the award.
  - f. An award under this subsection is not a business incentive under chapter 54-60.1.

3. The following provisions apply to entrepreneur awards:
  - a. An applicant must be an entrepreneur:
    - (1) Using the services of an entrepreneurial center certified by the department of commerce under subsection 2;
    - (2) With a business plan, but the business is not required to be a primary sector business; and
    - (3) That has been approved by the entrepreneurial center and by the corporation.
  - b. An award may not exceed twenty thousand dollars per business.
  - c. Before funds are distributed to an entrepreneur under this subsection, the entrepreneur shall provide the corporation with detailed documentation of the availability of one dollar of nonstate matching funds for every four dollars of state funds distributed under this subsection. Matching funds must be cash and may not be in-kind assets.
  - d. If during the twelve months preceding the application for an award under this subsection an entrepreneur received state funding for the business from any other source, the maximum award under this subsection must be decreased dollar for dollar for every dollar of other state funds received.
  - e. As a term of receipt of an award under this subsection, the entrepreneur shall pay back the funds awarded under this subsection. The payback schedule must be based upon the entrepreneur's ability to pay back the award and may include debt, equity, or a combination of debt and equity.

Approved April 8, 2011  
Filed April 11, 2011

# COUNTIES

## CHAPTER 89

### SENATE BILL NO. 2139

(Senators Lyson, Grindberg)  
(Representatives Kasper, Kempenich, Ruby)

AN ACT to amend and reenact section 11-15-14 of the North Dakota Century Code, relating to sheriff's fees.

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

**SECTION 1. AMENDMENT.** Section 11-15-14 of the North Dakota Century Code is amended and reenacted as follows:

**11-15-14. Sheriff's fees collectible in advance - Report of fees - Mileage in criminal cases.**

In civil actions, the sheriff shall collect the sheriff's fees in advance. Upon a request for cancellation of a civil action, the sheriff may retain up to twenty dollars of the collected fee. At the expiration of each month, the sheriff shall make a report, verified by the sheriff's affidavit, to the board of county commissioners showing all fees earned and collected during ~~such that~~ month and shall ~~turn over such~~ transfer those fees to the county treasurer. The sheriff shall ~~keep~~ maintain a complete record of all fees due to the sheriff's office for services rendered in criminal actions and shall file the sheriff's itemized statement for mileage in connection with criminal cases with the county auditor at the expiration of each month. Claims for mileage in criminal cases shall be audited by the board of county commissioners and paid by the county.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 90

### SENATE BILL NO. 2168

(Senators Klein, Nodland)  
(Representatives Kaldor, Wieland)

AN ACT to amend and reenact subsection 3 of section 11-18-05 of the North Dakota Century Code, relating to fees for electronic data extracted from recorded instruments.

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

**SECTION 1. AMENDMENT.** Subsection 3 of section 11-18-05 of the North Dakota Century Code is amended and reenacted as follows:

3. For making certified copies of any recorded instrument or filed non-central indexing system instrument, the charge is five dollars for the first page and two dollars for each additional page. For making a noncertified copy of any recorded instrument or filed non-central indexing system instrument, a fee of not more than one dollar per instrument page. For providing any electronic data extracted from the recorded instrument a fee of not more than fifty cents per instrument.

Approved April 19, 2011  
Filed April 11, 2011

# CORRECTIONS, PAROLE, AND PROBATION

## CHAPTER 91

### SENATE BILL NO. 2024

(Legislative Management)  
(Advisory Commission on Intergovernmental Relations)

AN ACT to create and enact a new section to chapter 12-44.1 and two new sections to chapter 50-24.1 of the North Dakota Century Code, relating to inmate medical care costs, inmate medical claims processing, and medicaid coverage to inmates in certain situations; to amend and reenact subsection 4 of section 12-44.1-01 and sections 12-44.1-12.1 and 12-44.1-14 of the North Dakota Century Code, relating to adequate medical care and payment of medical costs of inmates; to provide an appropriation; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Subsection 4 of section 12-44.1-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Inmate" means any person, whether sentenced or unsentenced, who is detained or confined in a correctional facility. The term does not include an individual who is under the supervision of the correctional facility and is supervised under home detention, electronic monitoring, or a similar program that does not involve physical detention or confinement in the facility.

**SECTION 2. AMENDMENT.** Section 12-44.1-12.1 of the North Dakota Century Code is amended and reenacted as follows:

**12-44.1-12.1. Establishment of inmate accounts - Withholding funds for inmate financial obligations - Health care costs - Payment of funds to inmate upon release.**

1. The correctional facility administrator shall establish an inmate account for each inmate.
2. The correctional facility administrator may withdraw funds from an inmate's account to meet the inmate's legitimate financial obligations, including child support and restitution. ~~The correctional facility administrator may withdraw funds from the inmate's account to pay and~~ for the inmate's medical, dental, and eye care costs ~~while the inmate is incarcerated in the correctional facility, and establish an administrative procedure for an inmate to appeal the withdrawal of the funds. Before the funds may be withdrawn, the inmate must first receive written notice and be provided a hearing with the right to correctional facility staff assistance and the right to review by the correctional facility administrator. No written notice or hearing is required if the withdrawal of funds is being made to meet the inmate's child support obligation.~~

- ~~3. A correctional facility administrator may collect fees from inmates to offset health care costs as follows:~~
- ~~a. For a medical visit, up to ten dollars per medical visit made at the request of an inmate.~~
  - ~~b. For self-inflicted injuries, the total amount of medical costs incurred.~~
  - ~~c. For necessary health care services, the correctional facility may seek reimbursement from the inmate up to the total amount of health care costs incurred. If the inmate has health insurance coverage, a medical or health care provider must file a claim for reimbursement from the health insurance coverage carrier. A correctional facility may not assess an inmate for any costs associated with an intake health care assessment and related testing or for an examination of an inmate made at the request of the facility.~~
  - ~~d. For elective health care requested by an inmate and as allowed by correctional facility policy, the inmate is responsible for the amount of the costs incurred.~~
  - ~~e. A correctional facility may not deny necessary and nonelective medical and health care to an inmate who does not have health insurance or does not have the ability to pay the costs of the medical or health care.~~
- 4.2. The correctional facility administrator shall pay an inmate all funds in the inmate's account when the inmate is discharged from the correctional facility or when the inmate is transferred to another correctional facility, less the inmate's outstanding obligations to the correctional facility.
- 5.3. This section does not limit or alter the provisions of chapter 14-09 relating to income withholding orders for child support.

**SECTION 3.** A new section to chapter 12-44.1 of the North Dakota Century Code is created and enacted as follows:

**Inmate medical care costs.**

An inmate is financially responsible for the costs of medical or health care, except for an intake health care assessment and related testing for an examination of the inmate made at the request of the facility. The correctional facility may seek reimbursement from the inmate up to the total amount of incurred medical or health care costs. If the inmate has health insurance coverage, a medical or health care provider shall file a claim for reimbursement from the health insurance provider. If the inmate does not have health insurance coverage and the inmate's medical or health care costs are the responsibility of the correctional facility, the correctional facility's responsibility may not exceed the rates paid under the federal medicare program. If elective medical or health care is allowed by a correctional facility policy, the inmate must arrange payment for elective medical or health care before receiving care.

**SECTION 4. AMENDMENT.** Section 12-44.1-14 of the North Dakota Century Code is amended and reenacted as follows:



**12-44.1-14. Inmate rights.**

Subject to reasonable safety, security, discipline, and correctional facility administration requirements, the administrator of each correctional facility shall:

1. Ensure inmates have confidential access to attorneys and their authorized representatives.
2. Ensure that inmates are not subjected to discrimination based on race, national origin, color, creed, sex, economic status, or political belief.
3. Ensure equal access by male and female inmates to programs and services available through the correctional facility.
4. Ensure access to mail, telephone use, and visitors.
5. Ensure that inmates are properly fed, clothed, and housed.
6. Ensure that inmates have adequate medical care. Adequate medical care means necessary treatment for a medical or health condition for which serious pain or hardship would occur if care is not given. A correctional facility may not deny adequate medical care to an inmate who does not have health insurance or does not have the ability to pay the costs of the medical or health care.
7. Ensure that inmates may reasonably exercise their religious beliefs.

**SECTION 5.** Two new sections to chapter 50-24.1 of the North Dakota Century Code are created and enacted as follows:

**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 a processing fee for each claim submission. The department shall establish a processing fee that may not exceed thirty dollars and shall update the fee annually on July first. The processing fee must be based on the annual 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 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.

**Department to expand medicaid coverage.**

After implementation of the medicaid management information system, the department of human services shall expand medicaid coverage to include medicaid-covered services provided to an inmate of the state penitentiary 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 6. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$149,094, or so much of the sum as may be necessary, to the department of human services for the purpose of modifying the department's medicaid claims system to process claims submitted by enrolled medicaid providers on behalf of inmates of county jails under

section 5 of this Act, for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 7. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$36,162, or so much of the sum as may be necessary, and from special funds derived from federal funds and other income, the sum of \$36,162, to the department of human services for the purpose of modifying the department's eligibility systems to process inpatient hospital claims for inmates of the state penitentiary and county jails under section 5 of this Act, for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 8. EFFECTIVE DATE.** Section 5 of this Act becomes effective upon the completion of the necessary changes to the department of human services' medicaid claims processing and eligibility systems.

Approved April 27, 2011  
Filed April 27, 2011

## CHAPTER 92

### SENATE BILL NO. 2136

(Senators Lyson, Cook, Flakoll)  
(Representatives Kasper, Kempenich, Ruby)

AN ACT to amend and reenact section 12-44.1-18.2 of the North Dakota Century Code, relating to work release fees paid by offenders in a correctional facility.

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

**SECTION 1. AMENDMENT.** Section 12-44.1-18.2 of the North Dakota Century Code is amended and reenacted as follows:

#### **12-44.1-18.2. Work release program - Room and board costs to be paid by inmate.**

Any inmate who participates in a work release program shall pay the correctional facility for the room and board costs incurred by the inmate while confined in the correctional facility, residential halfway house, or similar alternative facility. The administrator shall determine the amount of meal and lodging costs to be paid by the inmate. The amount to be paid by the inmate while confined in a correctional facility may not exceed ~~fifteen~~twenty dollars per day or the funds earned by the inmate, whichever is less. The amount to be paid by the inmate while placed in a residential halfway house or similar alternative facility may not exceed the actual cost per day or the funds earned by the inmate, whichever is less.

Approved April 19, 2011

Filed April 19, 2011

## CHAPTER 93

### SENATE BILL NO. 2141

(Senators Lyson, Cook, Wardner)  
(Representatives Kreidt, Ruby, Sukut)

AN ACT to create and enact a new section to chapter 12-44.1 of the North Dakota Century Code, relating to the granting of performance-based sentence reduction to offenders in a correctional facility; and to amend and reenact section 12-54.1-01 of the North Dakota Century Code, relating to performance-based sentence reduction.

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

**SECTION 1.** A new section to chapter 12-44.1 of the North Dakota Century Code is created and enacted as follows:

##### Performance-based sentence reduction.

The presiding judge of a judicial district in which a correctional facility is located, after consultation with the other judges in the district, may authorize the facility administrator to provide for sentence reductions based upon performance criteria established through the administrator except that sentence reductions may not be given to offenders sentenced under section 12.1-32-09.1. While incarcerated in a correctional facility, an offender may earn no more than a one-day sentence reduction per six days served.

**SECTION 2. AMENDMENT.** Section 12-54.1-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **12-54.1-01. Performance-based sentence reduction.**

4-Except as provided under section 12.1-32-09.1, offenders committed to the legal and physical custody of the department of corrections and rehabilitation are eligible to earn sentence reductions based upon performance criteria established through department and penitentiary rules. Performance criteria includes participation in court-ordered or staff-recommended treatment and education programs and good work performance. The department may credit an offender committed to the legal and physical custody of the department who is eligible for sentence reduction five days good time per month for each month of the sentence imposed. The department may not credit an offender with any sentence reduction for time spent in custody prior to sentence and commitment, for time under supervised probation, or for any sentence where the incarceration time is six months or less.

2. ~~The presiding judge of a judicial district in which a correctional facility is located, after consultation with the other judges in the district, may authorize the facility administrator to provide for sentence reductions based upon performance criteria established through the administrator. The criteria must be substantially similar to the performance criteria established by the penitentiary. Except as provided under section 12.1 32-09.1, offenders sentenced to the facility are eligible to earn sentence reductions based upon the performance criteria. While incarcerated in a correctional facility, an inmate~~

~~may earn five days good time per month except for any sentence where the incarceration time is thirty days or less.~~

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 94

### HOUSE BILL NO. 1081

(Government and Veterans Affairs Committee)  
(At the request of the State Board of Chiropractic Examiners)

AN ACT to create and enact a new subdivision to subsection 2 of section 12-60-24 and section 43-06-11.1 of the North Dakota Century Code, relating to criminal history record checks for chiropractors.

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

<sup>38</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 state board of chiropractic examiners for applicants, licensees, or investigations under chapter 43-06, except that criminal history record checks need not be made unless required by the board.

**SECTION 2.** Section 43-06-11.1 of the North Dakota Century Code is created and enacted as follows:

#### **43-06-11.1. Criminal history record checks.**

The board may require any applicant or licensee under this chapter to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided by section 12-60-24. All costs associated with obtaining a criminal history record check are the responsibility of the applicant or licensee.

Approved March 28, 2011  
Filed March 28, 2011

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<sup>38</sup> Section 12-60-24 was also amended by section 1 of Senate Bill No. 2199, chapter 327, section 1 of Senate Bill No. 2097, chapter 328, and section 1 of Senate Bill No. 2114, chapter 512.

## CHAPTER 95

### HOUSE BILL NO. 1338

(Representatives Dahl, DeKrey)

AN ACT to amend and reenact section 12-67-02 of the North Dakota Century Code, relating to electronic home detention for certain offenders.

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

**SECTION 1. AMENDMENT.** Section 12-67-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **12-67-02. Application.**

1. For those offenders who are sentenced by the court to a term of imprisonment in a county jail or regional correctional facility, the court may commit the offender to the legal and physical custody of the administrator of the jail or correctional facility ~~who~~. Except in cases in which the law requires mandatory incarceration and does not allow for electronic home detention or global positioning system monitoring, the administrator of the jail or correctional facility shall make the decision as to whether the use of electronic home detention or global positioning system monitoring is appropriate for that offender.
2. ~~Except for an offense for which the law requires mandatory incarceration, electronic~~Electronic home detention or global positioning system monitoring may be used for adult and juvenile offenders as selected by the court, the administrator, the parole board, or the department for adult offenders as an intermediate measure of supervised probation, and for delinquent juvenile offenders in the custody of the division of juvenile services as a condition of community placement. Electronic home detention and global positioning system monitoring may be used for the following:
  - a. Pretrial or preadjudicatory detention.
  - b. Probation.
  - c. Community corrections approved by the court.
  - d. Parole.
  - e. Work release under chapter 12-44.1 or approved by the parole board.
  - f. Institutional release approved by the court or the parole board.
  - g. ~~County jail diversion approved by the court.~~
  - h. Sex offender containment.
3. If not otherwise prohibited by law, the administrator may use electronic home detention or global positioning system monitoring for an offender if required

due to medical needs of the offender or to prevent overcrowding in the county jail or regional correctional facility.

4. If the law requires mandatory incarceration and does not allow for electronic home detention or global positioning system monitoring, the court order must expressly prohibit electronic home detention and global positioning system monitoring.

Approved April 19, 2011  
Filed April 20, 2011



# CRIMINAL CODE

## CHAPTER 96

### HOUSE BILL NO. 1204

(Representatives Delmore, Hawken, Maragos, Sanford)  
(Senators Lyson, Nelson)

AN ACT to amend and reenact subsection 6 of section 12.1-17-07.1 of the North Dakota Century Code, relating to stalking and previous convictions.

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

**SECTION 1. 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, 12.1-17-02, 12.1-17-04, 12.1-17-05, or 12.1-17-07, or a similar offense ~~in another state~~ 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.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 97

### HOUSE BILL NO. 1249

(Representatives Koppelman, Beadle, Kingsbury, Steiner, Delmore)  
(Senator J. Lee)

AN ACT to amend and reenact section 12.1-20-12.2 of the North Dakota Century Code, relating to surreptitious intrusion.

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

**SECTION 1. AMENDMENT.** Section 12.1-20-12.2 of the North Dakota Century Code is amended and reenacted as follows:

##### **12.1-20-12.2. Surreptitious intrusion.**

1. An individual, with the intent to arouse, appeal to, or gratify that individual's lust, passions, or sexual desires, is guilty of a class A misdemeanor if that individual does any of the following:
  - a. With intent to intrude upon or interfere with the privacy of another, enters upon another's property and surreptitiously gazes, stares, or peeps ~~in the window or any other aperture of~~into a house or place of dwelling of another.
  - b. With intent to intrude upon or interfere with the privacy of another, enters upon another's property and surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events ~~through the window or any other aperture of~~from a house or place of dwelling of another.
  - c. With intent to intrude upon or interfere with the privacy of the occupant, surreptitiously gazes, stares, or peeps ~~in the window or other aperture of~~into a tanning booth, a sleeping room in a hotel, or other place where a reasonable individual would have an expectation of privacy and has exposed or is likely to expose that individual's intimate parts or has removed the clothing covering the immediate area of the intimate parts.
  - d. With intent to intrude upon or interfere with the privacy of the occupant, surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events ~~through the window or other aperture of~~from a tanning booth, a sleeping room in a hotel, or other place where a reasonable individual would have an expectation of privacy and has exposed or is likely to expose that individual's intimate parts or has removed the clothing covering the immediate area of the intimate parts.
2. A person is guilty of a class C felony if the person violates subsection 1 after a previous conviction for violating subsection 1, after a previous conviction for violating section 12.1-20-12.1, or after being required to register under section 12.1-32-15.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 98

### SENATE BILL NO. 2241

(Senators Lyson, Berry, Sitte)  
(Representatives Dahl, Heller, Louser)

AN ACT to amend and reenact subsection 2 of section 12.1-23-05 of the North Dakota Century Code, relating to the grading of theft offenses for theft of a prescription drug; to provide a penalty; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 12.1-23-05 of the North Dakota Century Code is amended and reenacted as follows:

2. Theft under this chapter is a class C felony if:
  - a. The property or services stolen exceed five hundred dollars in value;
  - b. The property or services stolen are acquired or retained by threat and (1) are acquired or retained by a public servant by a threat to take or withhold official action, or (2) exceed fifty dollars in value;
  - c. The property or services stolen exceed fifty dollars in value and are acquired or retained by a public servant in the course of official duties;
  - d. The property stolen is a firearm, ammunition, explosive or destructive device, or an automobile, aircraft, or other motor-propelled vehicle;
  - e. The property consists of any government file, record, document, or other government paper stolen from any government office or from any public servant;
  - f. The defendant is in the business of buying or selling stolen property and the defendant receives, retains, or disposes of the property in the course of that business;
  - g. The property stolen consists of any implement, paper, or other thing uniquely associated with the preparation of any money, stamp, bond, or other document, instrument, or obligation of this state;
  - h. The property stolen consists of livestock taken from the premises of the owner;
  - i. The property stolen consists of a key or other implement uniquely suited to provide access to property the theft of which would be a felony and it was stolen to gain such access; ~~or~~
  - j. The property stolen is a card, plate, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit, or is a debit card, electronic fund transfer card, code, or other means of access to an account for the purposes of initiating electronic fund transfers; or

k. The property stolen is a prescription drug as defined in section 43-15.3-01.

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

Approved April 26, 2011  
Filed April 26, 2011

## CHAPTER 99

### HOUSE BILL NO. 1371

(Representatives Delmore, Koppelman, Sanford)  
(Senators Olafson, Nelson, Lyson)

AN ACT to amend and reenact subsection 1 of section 12.1-27.1-03.3 of the North Dakota Century Code, relating to the creation, possession, or dissemination of sexually expressive images.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 12.1-27.1-03.3 of the North Dakota Century Code is amended and reenacted as follows:

1. A person is guilty of a class A misdemeanor if, knowing of its character and content, that person:
  - a. Without written consent from each individual who has a reasonable expectation of privacy in the image, surreptitiously creates or willfully possesses a sexually expressive image that was surreptitiously created; or
  - b. Distributes or publishes, electronically or otherwise, a sexually expressive image with the intent to cause emotional harm or humiliation to any individual depicted in the sexually expressive image who has a reasonable expectation of privacy in the image, or after being given notice by an individual or parent or guardian of the individual who is depicted in a sexually expressive image that the individual, parent, or guardian does not consent to the distribution or publication of the sexually expressive image.

Approved April 4, 2011  
Filed April 4, 2011

## CHAPTER 100

### HOUSE BILL NO. 1224

(Representative Weiler)

AN ACT to create and enact a new subdivision to subsection 1 of section 12.1-31-01 and a new section to chapter 12.1-31 of the North Dakota Century Code, relating to disorderly conduct and surreptitious intrusion or interference with privacy; to amend and reenact subsection 2 of section 12.1-31-01.1 of the North Dakota Century Code, relating to disorderly conduct at a funeral; and to provide a penalty.

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

**SECTION 1.** A new subdivision to subsection 1 of section 12.1-31-01 of the North Dakota Century Code is created and enacted as follows:

Uses a fixed optical device that enhances or records a visual occurrence to view through any window of another person's property; or uses a surveillance camera to capture an image from the dwelling or accessory structure of another person; however, an individual using a surveillance camera has seven days from notice by a law enforcement officer to direct or shield the camera so as to not capture an image from another person's dwelling or accessory structure before there is an offense.

**SECTION 2. AMENDMENT.** Subsection 2 of section 12.1-31-01.1 of the North Dakota Century Code is amended and reenacted as follows:

2. An individual is guilty of disorderly conduct at a funeral if the individual:
  - a. Engages, with knowledge of the existence of a funeral site, in any loud singing, playing of music, chanting, whistling, yelling, or noisemaking within ~~three hundred~~one thousand feet [~~91.44300.48~~ meters] of any ingress or egress of that funeral site if the volume of the singing, music, chanting, whistling, yelling, or noisemaking is likely to be audible at and disturbing to the funeral site; or
  - b. Displays, with knowledge of the existence of a funeral site and within ~~three hundred~~one thousand feet [~~91.44300.48~~ meters] of any ingress or egress of that funeral site, any visual images that convey fighting words or actual or veiled threats against any other individual.

**SECTION 3.** A new section to chapter 12.1-31 of the North Dakota Century Code is created and enacted as follows:

#### **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.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 101

### HOUSE BILL NO. 1028

(Legislative Management)  
(Commission on Alternatives to Incarceration)

AN ACT to amend and reenact sections 12-48.1-02, 12.1-32-02.1, and 12.1-32-09.1 of the North Dakota Century Code, relating to offender eligibility for release programs.

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

**SECTION 1. AMENDMENT.** Section 12-48.1-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **12-48.1-02. Conditions of eligibility for release programs.**

1. An offender, except an offender sentenced to a penalty of life imprisonment without the opportunity for parole as the result of conviction of a class AA felony under section 12.1-20-03 or of murder under section 12.1-16-01, may be eligible for programs outside facilities under the control of the department of corrections and rehabilitation when the department determines the offender is not a high security risk, not likely to commit a crime of violence, and is likely to be rehabilitated by such program. An offender may apply to the director of the department for permission to participate in such programs.
2. The director of the department may authorize participation in outside programs for an offender who has been committed to ten years or less to the legal and physical custody of the department. The parole board, with the approval of the director of the department, may authorize participation in outside programs for offenders who have been committed to the legal and physical custody of the department for more than ten years.
3. The offender shall submit a signed application which must include a statement that the offender agrees to abide by all terms and conditions of the particular plan adopted for the offender, and must include such other information as the parole board or the director of the department may require.
4. The parole board may approve, disapprove, or defer action on an application approved by the director of the department. The director of the department or the parole board may revoke approval of the application at any time after granting the application. The department shall prescribe rules of conduct and treatment for all offenders on release programs.
5. The director of the department may grant short leaves, not to exceed seventy-two hours, to offenders who have been committed to the legal and physical custody of the department for ten years or less. The parole board, upon the approval of the director of the department, may grant short leaves, not to exceed seventy-two hours, to offenders committed to the legal and physical custody of the department for more than ten years.



6. All rules adopted by the parole board and the director of the department relating to release programs and short leaves must conform, to the extent allowable by law, with executive order no. 11755 issued by the President of the United States.

**SECTION 2. AMENDMENT.** Section 12.1-32-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-32-02.1. Mandatory prison terms for armed offenders.**

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, in the course of committing an offense, the offender inflicts or attempts to inflict bodily injury upon another, threatens or menaces another with imminent bodily injury with a dangerous weapon, explosive, destructive device, or firearm, or possesses or has within immediate reach and control a dangerous weapon, explosive, destructive device, or firearm while in the course of committing an offense under subsection 1, 2, or, except for the simple possession of marijuana, 6 of section 19-03.1-23. This requirement applies only when possession of a dangerous weapon, explosive, destructive device, or firearm has been charged and admitted or found to be true in the manner provided by law, and must be imposed as follows:
  4. a. If the offense for which the offender is convicted is a class A or class B felony, the court shall impose a minimum sentence of four years' imprisonment.
  2. b. If the offense for which the offender is convicted is a class C felony, the court shall impose a minimum sentence of two years' imprisonment.
2. This section applies even when being armed is an element of the offense for which the offender is convicted.
3. An offender serving a sentence subject to this section may be eligible to participate in a release program under section 12-48.1-02 during the last six months of the offender's sentence.

**SECTION 3. 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.**

AnyExcept 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, 12.1-17-02, 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. 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. 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.

Approved March 28, 2011

Filed March 28, 2011

## CHAPTER 102

### SENATE BILL NO. 2231

(Senators Dever, Heckaman, Uglem)  
(Representatives Delmore, Devlin, L. Meier)

AN ACT to amend and reenact subsections 1 and 7 of section 12.1-32-15 of the North Dakota Century Code, relating to the registration of sexual offenders.

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

<sup>39</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 12.1-32-15 of the North Dakota Century Code is amended and reenacted as follows:

1. As used in this section:
  - a. "A crime against a child" means a violation of chapter 12.1-16, section 12.1-17-01.1 if the victim is under the age of twelve, 12.1-17-02, 12.1-17-04, subdivision a of subsection 6 of section 12.1-17-07.1, section 12.1-18-01, 12.1-18-02, 12.1-18-05, chapter 12.1-29, or subdivision a of subsection 1 or subsection 2 of section 14-09-22, labor trafficking in violation of chapter 12.1-40, 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. "Mental abnormality" means a congenital or acquired condition of an individual that affects the emotional or volitional capacity of the individual in a manner that predisposes that individual to the commission of criminal sexual acts to a degree that makes the individual a menace to the health and safety of other individuals.
  - d. "Predatory" means an act directed at a stranger or at an individual with whom a relationship has been established or promoted for the primary purpose of victimization.
  - e. "Sexual offender" means a person who has pled guilty to or been found guilty, including juvenile delinquent adjudications, of a violation of section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-05.1, 12.1-20-06, 12.1-20-06.1, 12.1-20-07 except for subdivision a, 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, sex trafficking in violation of chapter 12.1-40, 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.

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<sup>39</sup> Section 12.1-32-15 was also amended by section 1 of House Bill No. 1435, chapter 103.

- f. "Sexually dangerous individual" means an individual who meets the definition specified in section 25-03.3-01.
- g. "Temporarily domiciled" means staying or being physically present in this state for more than thirty days in a calendar year or at a location for longer than ten consecutive days, attending school for longer than ten days, or maintaining employment in the jurisdiction for longer than ten days, regardless of the state of the residence.

**SECTION 2. AMENDMENT.** Subsection 7 of section 12.1-32-15 of the North Dakota Century Code is amended and reenacted as follows:

- 7. Registration consists of a written statement signed by the individual, giving the information required by the attorney general, and the fingerprints and photograph of the individual. An individual who is not required to provide a sample of blood and other body fluids under section 31-13-03 or by the individual's state or court of conviction or adjudication shall submit a sample of blood and other body fluids for inclusion in a centralized data base of DNA identification records under section 31-13-05. The collection, submission, testing and analysis of, and records produced from, samples of blood and other body fluids, are subject to chapter 31-13. Evidence of the DNA profile comparison is admissible in accordance with section 31-13-02. A report of the DNA analysis certified by the state crime laboratory is admissible in accordance with section 31-13-05. A district court shall order an individual who refuses to submit a sample of blood or other body fluids for registration purposes to show cause at a specified time and place why the individual should not be required to submit the sample required under this subsection. Within three days after registration, the registering law enforcement agency shall forward the statement, fingerprints, and photograph to the attorney general and shall submit the sample of the individual's blood and body fluids to the state crime laboratory. If an individual required to register under this section has a change in vehicle or computer online identity, the individual shall inform in writing, within three days after the change, 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 inform in writing, at least ten days before the change, the law enforcement agency with whom that individual last registered of the individual's new name, school, residence address, or employment address. A change in school or employment address includes the termination of school or employment for which an individual required to register under this section shall inform in writing within five days of the termination the law enforcement agency with whom 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 fingerprint portion of the registration if that agency has a set of fingerprints on file for that individual and is personally familiar with and can

visually identify the offender. These provisions also apply in any other state that requires registration.

Approved April 27, 2011  
Filed April 27, 2011

## CHAPTER 103

### HOUSE BILL NO. 1435

(Representatives Koppelman, Hunskor, Kingsbury)  
(Senators Miller, Robinson, Sorvaag)

AN ACT to create and enact a new subsection to section 12.1-32-15 of the North Dakota Century Code, relating to sexual offender and felony crimes against children registration requirements; and to declare an emergency.

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

<sup>40</sup> **SECTION 1.** A new subsection to section 12.1-32-15 of the North Dakota Century Code is created and enacted as follows:

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 park and recreation department law enforcement officer at the state park where the sexual offender will be staying.

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

Approved April 25, 2011  
Filed April 25, 2011

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<sup>40</sup> Section 12.1-32-15 was also amended by section 1 of Senate Bill No. 2231, chapter 102.

## CHAPTER 104

### HOUSE BILL NO. 1230

(Representatives Delmore, DeKrey, Hawken, Kretschmar)  
(Senators Nething, Heckaman)

AN ACT to amend and reenact section 12.1-34-03 of the North Dakota Century Code, relating to fair treatment of victims and witnesses and confidential records.

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

**SECTION 1. AMENDMENT.** Section 12.1-34-03 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-34-03. (Contingent expiration date - See note) Responsibilities of victims and witnesses.**

Victims and witnesses have all of the following responsibilities to aid in the prosecution of crime:

1. To make a timely report of the crime.
2. To cooperate with law enforcement authorities throughout the investigation, prosecution, and trial.
3. To testify at trial.
4. To notify law enforcement authorities, prosecuting attorney, custodial authority, parole board, pardon clerk, and court, where appropriate, of any change of address. The Except for release to a domestic violence sexual assault organization as defined in section 14-07.1-01, the address information provided to these persons must be kept confidential.

**(Contingent effective date - See note) Responsibilities of victims and witnesses.** Victims and witnesses have all of the following responsibilities to aid in the prosecution of crime:

1. To make a timely report of the crime.
2. To cooperate with law enforcement authorities throughout the investigation, prosecution, and trial.
3. To testify at trial.
4. To notify the system, law enforcement authorities, prosecuting attorney, custodial authority, parole board, pardon clerk, and court, where appropriate, of any change of contact information. All Except for release to a domestic violence sexual assault organization as defined in section 14-07.1-01, all contact information provided must be kept confidential.

# DEBTOR AND CREDITOR RELATIONSHIPS

## CHAPTER 105

### SENATE BILL NO. 2124

(Judiciary Committee)

(At the request of the Department of Financial Institutions)

AN ACT to create and enact two new subsections to section 13-04.1-01.1, sections 13-04.1-04.1 and 13-04.1-04.2, and four new sections to chapter 13-04.1 of the North Dakota Century Code, relating to the definition of a net branch and net branching arrangement, surety bond requirements, minimum net worth requirements, confidentiality, notice regarding change of name and address, call reports, and commissioner reporting to nationwide mortgage licensing system and registry with regard to money brokers; to amend and reenact sections 13-04.1-03, 13-04.1-04, 13-04.1-07, 13-04.1-08, 13-04.1-08.1, 13-04.1-09, 13-04.1-11, and 13-10-03 and subsection 6 of section 13-10-16 of the North Dakota Century Code, relating to application for branch offices, maintenance of records, revocation of license, suspension and removal of agency officers and employees, prohibited acts and practices, investigation and examination authority of money brokers, and licensing and registration of mortgage loan originators; and to provide a penalty.

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

**SECTION 1.** Two new subsections to section 13-04.1-01.1 of the North Dakota Century Code are created and enacted as follows:

"Net branch" means an office at which a licensed money broker allows a separate person that does not hold a valid North Dakota money brokers license to originate loans under the license of the money broker.

"Net branch arrangement" means an arrangement under which a licensed money broker enters an agreement whereby its designated branch manager has the appearance of ownership of the licensee by, among other things, sharing in the profits or losses, establishing, leasing, or renting the branch premises, entering other contractual relationships with vendors such as for telephones, utilities, and advertising, having control of a corporate checkbook, or exercising control of personnel through the power to hire or fire such individuals. A person may be considered to be utilizing a net branch if the net branch agreement requires the branch manager to indemnify the licensee for damages from any apparent, express, or implied agency representation by or through the branch's actions or if the agreement requires the branch manager to issue a personal check to cover operating expenses whether or not funds are available from an operating account of the licensee.



**SECTION 2. AMENDMENT.** Section 13-04.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**13-04.1-03. Application for money broker license.**

Every application for a money broker license or branch registration, or for a renewal thereof, must be made upon forms designed and furnished by the department of financial institutions and must contain any information which the department shall deem necessary and proper. A branch registration that constitutes a net branch or net branching arrangement is prohibited. The department may further require any application to provide additional information which is not requested on the application form. The applicant must register with the North Dakota secretary of state if so required.

**SECTION 3. AMENDMENT.** Section 13-04.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**13-04.1-04. Fee ~~and bond~~ to accompany application for money broker license.**

The application for license must be in writing, under oath, and in the form prescribed by the commissioner. The application must give the location where the business is to be conducted and must contain any further information the commissioner requires, including the names and addresses of the partners, officers, directors, trustees, and the principal owners or members, as will provide the basis for the investigation and findings contemplated by section 13-04.1-03. At the time of making such application, the applicant shall include payment in the sum of four hundred dollars, which is not subject to refund, as a fee for investigating the application, and the sum of four hundred dollars for the annual license fee, ~~and provide a surety bond in the sum of twenty five thousand dollars.~~ In addition, the applicant must pay a fifty dollar annual fee for each branch location within the state. Fees must be deposited in the financial institutions regulatory fund.

**SECTION 4.** Section 13-04.1-04.1 of the North Dakota Century Code is created and enacted 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 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 5.** Section 13-04.1-04.2 of the North Dakota Century Code is created and enacted as follows:

**13-04.1-04.2. Minimum net worth required.**

A minimum net worth must be continuously maintained by every licensee in accordance with this section.

1. Minimum net worth must be maintained in the amount of twenty-five thousand dollars.
2. If the net worth of a licensee falls below the minimum net worth set forth in subsection 1, the licensee shall provide a plan, subject to the approval of the commissioner, to increase the licensee's net worth to an amount in conformance with this section. Submission of a plan under this section must be made within twenty business days of a notice from the commissioner which states the licensee is not in compliance with subsection 1. If the licensee does not submit a plan under this section, fails to comply with an approved plan, or has repeated violations of subsection 1, the commissioner may revoke the license.

**SECTION 6. AMENDMENT.** Section 13-04.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**13-04.1-07. Manner in which records to be kept.**

Every money broker licensed under this chapter shall keep a record of all sums collected by them and of all loans and leases completed as a result of their efforts for a period of six years from the date of last entry thereon. The records of a licensee may be maintained electronically provided they can be reproduced upon request by the department of financial institutions and within the required statutory time period provided in this section. When a licensee ceases operations for any reason, the licensee shall inform the department of the location of the records. In addition, the licensee shall provide the name of the individual responsible for maintenance of the records. The licensee shall notify the department within ten business days of the change of the location of the records or the change of the individual responsible for maintenance of the records.

**SECTION 7. AMENDMENT.** Section 13-04.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**13-04.1-08. Revocation of license - Suspension of license - Surrender of license.**

1. ~~The department of financial institutions commissioner may, if it has reason to believe that grounds for revocation of a license exist, send by registered or certified mail to the licensee, a notice of hearing stating the contemplated action and in general the grounds thereof and setting the time and place for a hearing thereon. Such hearing must be held in accordance with chapter 28-32 as must any appeal therefrom. issue and serve upon any licensee an order suspending or revoking a licensee's license if the commissioner finds that:~~
  - a. The licensee has failed to pay the annual license fee under this chapter or any examination fee imposed by the commissioner under the authority of this chapter.
  - b. The licensee, either knowingly or without the exercise of due care to prevent the same, has violated any provision of this chapter or any regulation or order lawfully made pursuant to and within the authority of this chapter.
  - c. Any fact or condition existing at the time of the original application for such license which clearly would have warranted the department of financial institutions in refusing originally to issue such license.

- d. The licensee has failed to maintain the required bond.
- e. The licensee has failed to maintain registration with the secretary of state if so required.
- 2. The order must contain a notice of opportunity for hearing pursuant to chapter 28-32.
- 3. If no hearing is requested within twenty days of the date the order is served upon the licensee, or if a hearing is held and the commissioner finds that the record so warrants, the commissioner may enter a final order suspending or revoking the license.
- 2-4. If the ~~department of financial institutions~~ commissioner finds that probable cause for revocation of any license exists and that enforcement of the chapter requires immediate suspension of such license pending investigation, it may, upon written notice, enter an order suspending such license for a period not exceeding ~~thirty~~ sixty days, pending the holding of a hearing as prescribed in this chapter.
- 3-5. Any licensee may surrender the licensee's license by delivering it to the department of financial institutions with written notice of its surrender, but such surrender does not affect the licensee's civil or criminal liability for acts committed prior thereto.

**SECTION 8. AMENDMENT.** Section 13-04.1-08.1 of the North Dakota Century Code is amended and reenacted as follows:

**13-04.1-08.1. Suspension and removal of money broker officers and employees.**

1. The commissioner of financial institutions may issue and serve upon a current or former money broker officer or employee and upon the licensee involved a complaint order stating ~~the basis for the commissioner's belief that the:~~
  - a. That the current or former officer or employee is willfully engaging or has willfully engaged in any of the following conduct:
    - a- (1) Violating a law, rule, order, or written agreement with the commissioner;
    - b- (2) Engaging in harassment or abuse, the making of false or misleading representations, or engaging in unfair practices involving lending activity;
    - c- (3) Performing an act of commission or omission or practice which is a breach of trust or a breach of fiduciary duty.
  - b. The term of the suspension or removal from employment and participation within the conduct or the affairs of a money broker.
2. The complaint order must contain a notice of opportunity for hearing pursuant to chapter 28-32.
3. If a hearing is not requested within twenty days of the date the complaint order is served ~~upon the officer or employee~~, or if a hearing is held and the

commissioner finds that the record so warrants, the commissioner may enter ~~a final~~ order suspending or temporarily removing the current or former employee or officer from office for a period not exceeding three years from the effective date of the suspension or temporary removal. The current or former officer or employee may request a termination of the final order after a period of no less than three years.

4. A contested or default suspension or temporary removal order is effective immediately upon service of the final order on the current or former officer or employee and upon the licensee. A consent order is effective as agreed. ~~Any current or former officer or employee suspended or temporarily removed from office~~employment and participation within the conduct or the affairs of a money broker pursuant to this section is not eligible, while under suspension, for reinstatement to a position within a licensed money broker or removal, to be employed or otherwise participate in the affairs of any financial corporation, financial institution, credit union, or any other entity licensed by the department of financial institutions.
5. When ~~any current or former~~ officer or employee, or other person participating in the conduct of the affairs of a licensee is charged with a felony in state or federal court which involves dishonesty or breach of trust, the commissioner may immediately suspend the person from office or prohibit the person from further participation in the affairs of the money broker, or both. The order is effective immediately upon service of the order on the licensee and the person charged and remains in effect until the criminal charge is finally disposed of or until modified by the commissioner. If a judgment of conviction, federal pretrial diversion, or similar state order or judgment is entered, the commissioner may order that the suspension or prohibition be made permanent. A finding of not guilty or other disposition of the charge does not preclude the commissioner from pursuing administrative or civil remedies.
6. Under this section, a person engages in conduct "willfully" if the person acted intentionally in the sense that the person was aware of what the person was doing.

**SECTION 9. AMENDMENT.** Section 13-04.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**13-04.1-09. ~~Fraudulent~~Prohibited acts and practices.**

It is a ~~fraudulent practice and it is unlawful~~violation of this chapter for a person subject to this chapter to knowingly:

1. ~~For any person knowingly to subscribe to, or make~~Make or cause to be made, any material false statement or representation in any application or other document or statement required to be filed under any provision of this chapter, or to omit to state any material statement or fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.
2. ~~For any person, in connection with the procurement or promise of procurement of any lender or loan funds, directly~~Directly or indirectly, to employ any device, scheme, or artifice to defraud or mislead borrowers or lenders to defraud any person.

3. ~~For any person, in connection with the procurement or promise of procurement of any lender or loan funds, directly~~ Directly or indirectly, to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading in connection with the procurement or promise of procurement of any lender or loan funds.
4. Engage in any unfair or deceptive practice toward any person.
5. Obtain property by fraud or misrepresentation.
6. Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting.
7. Conduct any business covered by this chapter without holding a valid license as required under this chapter, or assist or aid and abet any person in the conduct of business under this chapter without a valid license as required under this chapter.
8. Fail to make disclosures as required by this chapter and any other applicable state or federal law and regulations.
9. Fail to comply with this chapter or rules adopted under this chapter, or fail to comply with any other state or federal law, including the rules and regulations thereunder, applicable to any business authorized or conducted under this chapter.
10. Make, in any manner, any false or deceptive statement or representation, including, with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan or engage in bait and switch advertising.
11. Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the nationwide mortgage licensing system and registry or in connection with any investigation conducted by the commissioner or another governmental agency.
12. Make any payment, threat, or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a loan or make any payment, threat, or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property.
13. Collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by this chapter.
14. Cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer.
15. Fail to truthfully account for moneys belonging to a party to a loan transaction.

16. Conduct another business within the same office, suite, room, or place of business at which the licensee engages in money broker business unless the commissioner provides written authorization after a determination the other business is not contrary to the best interests of any borrower or potential borrower.

<sup>41</sup> **SECTION 10. AMENDMENT.** Section 13-04.1-11 of the North Dakota Century Code is amended and reenacted as follows:

**13-04.1-11. Investigations and, subpoenas, and examination authority.**

In addition to any authority allowed under this chapter, the commissioner may conduct investigation and examinations as follows:

1. The department of financial institutions in its discretion:
  - a. May make such public or private investigation or examination within or outside this state as it deems necessary to determine whether any person has violated or is about to violate any provision of this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder. The licensee shall pay an investigation or examination fee and must be charged by the department of financial institutions at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the visitation provided for by this section. Fees must be paid to the state treasurer and deposited in the financial institutions regulatory fund.
  - b. May require or permit any person to file a statement in writing, under oath or otherwise as the department determines, as to all the facts and circumstances concerning the matter to be investigated or examined.
  - c. May publish information concerning any violation of this chapter or any rule or order hereunder.
2. For the purpose of any investigation, examination, or proceeding under this chapter, the department of financial institutions may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the department deems relevant or material to the inquiry.
3. In case of contumacy by, or refusal to obey a subpoena issued to, any person, the district court, upon application by the department of financial institutions, may issue to the person an order requiring such person to appear before the department, there to produce documentary evidence if so ordered or to give evidence touching the matter in question under investigation or ~~in question~~ examination. Failure to obey the order of the court may be punished by the court as a contempt of court.
4. No person is excused from attending and testifying or from producing any document or record before the department of financial institutions, or in obedience to the subpoena of the department, or in any proceeding instituted by the department, on the grounds that the testimony or evidence,

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<sup>41</sup> Section 13-04.1-11 was also amended by section 2 of Senate Bill No. 2104, chapter 75.

documentary or otherwise, required of such person may tend to incriminate such person or subject such person to a penalty forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which such person is compelled, after claiming the privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

5. For purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination, or general or specific inquiry or investigation to determine compliance with this chapter, the commissioner may access, receive, and use any books, accounts, records, files, documents, information, or evidence, including:
  - a. Criminal, civil, and administrative history information, including nonconviction data;
  - b. Personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and
  - c. Any other documents, information, or evidence the commissioner deems relevant to the inquiry or investigation regardless of the location, possession, control, or custody of such documents, information, or evidence.
6. For purposes of investigating violations or complaints arising under this chapter, or for purposes of examination, the commissioner may review, investigate, or examine any licensee or person subject to this chapter, as often as necessary in order to carry out the purposes of this chapter.
7. Each licensee or person subject to this chapter shall make available to the commissioner upon request the books and records relating to the operations of such licensee or person subject to this chapter. The commissioner shall have access to such books and records and interview the officers, principals, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee or person subject to this chapter concerning their business.
8. Each licensee or person subject to this chapter shall make or compile reports or prepare other information as directed by the commissioner in order to carry out the purposes of this section, including:
  - a. Accounting compilations;
  - b. Information lists and data concerning loan transactions in a format prescribed by the commissioner; or
  - c. Such other information deemed necessary to carry out the purposes of this section.
9. In making any investigation or examination authorized by this chapter, the commissioner may control access to any documents and records of the licensee or person under investigation or examination. The commissioner may

take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, a person may not remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the commissioner. Unless the commissioner has reasonable grounds to believe the documents or records of the licensee have been, or are at risk of being altered or destroyed for purposes of concealing a violation of this chapter, the licensee or owner of the documents and records may have access to the documents or records as necessary to conduct its ordinary business affairs.

10. In order to carry out the purposes of this section, the commissioner may:
  - a. Retain accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;
  - b. Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this section;
  - c. Use, hire, contract, or employ publicly or privately available analytical systems, methods, or software to examine or investigate the licensee, individual, or person subject to this chapter;
  - d. Accept and rely on examination or investigation reports made by other government officials, within or without this state; and
  - e. Accept audit reports made by an independent certified public accountant for the licensee or person subject to this chapter in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the commissioner.
11. The authority of this section remains in effect, whether such a licensee or person subject to this chapter acts or claims to act under any licensing or registration law of this state or claims to act without such authority.
12. A licensee or person subject to investigation or examination under this section may not knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

**SECTION 11.** A new section to chapter 13-04.1 of the North Dakota Century Code is created and enacted as follows:

### **Confidentiality.**

To promote more effective regulation and reduce regulatory burden through supervisory information sharing:

1. Except as otherwise provided in Public Law 110-289, section 1512, the requirements under any federal law, chapter 44-04, or section 6-01-07.1, regarding the privacy or confidentiality of any information or material provided to the nationwide mortgage licensing system and registry, and any privilege



arising under federal or state law, including the rules of any federal or state court, with respect to such information or material, continue to apply to such information or material after the information or material has been disclosed to the nationwide mortgage licensing system and registry. Such information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law, chapter 44-04, or section 6-01-07.1.

2. For these purposes, the commissioner may enter agreements or sharing arrangements with other governmental agencies, the conference of state bank supervisors, the American association of residential mortgage regulators, or other associations representing governmental agencies.
3. Information or material that is subject to a privilege or confidentiality under subsection 1 is not subject to:
  - a. Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or
  - b. Subpoena or discovery, or admission into evidence, in any administrative process, unless with respect to any privilege held by the nationwide mortgage licensing system and registry with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege.
4. The commissioner shall take all necessary steps, under any applicable law or rule, to protect the disclosure of information or material that is subject to a privilege or confidentiality under subsection 1. Records subject to a privilege or confidentiality under subsection 1 may be required to be disclosed only pursuant to an order of the court. The court ordering the disclosure shall issue a protective order to protect the confidential nature of the records.
5. Application of chapter 44-04 or section 6-01-07.1, relating to the disclosure of confidential supervisory information or any information or material described in subsection 1 which is inconsistent with subsection 1, is superseded by the requirements of this section.

**SECTION 12.** A new section to chapter 13-04.1 of the North Dakota Century Code is created and enacted as follows:

**Change of name or address.**

A licensee is required to submit within twenty business days of the date of change notification of a change of name or change of address. The notification must be in the form prescribed by the commissioner. In addition, the licensee shall submit the original license certificate for reissue.

**SECTION 13.** A new section to chapter 13-04.1 of the North Dakota Century Code is created and enacted as follows:

### **Call reports.**

Each licensee shall submit to the nationwide mortgage licensing system and registry reports of condition which must be in such form and must contain such information as the nationwide mortgage licensing system and registry may require.

**SECTION 14.** A new section to chapter 13-04.1 of the North Dakota Century Code is created and enacted as follows:

### **Report to nationwide mortgage licensing system and registry.**

Notwithstanding state privacy law, the commissioner shall report regularly violations of this chapter, as well as enforcement actions and other relevant information, to the nationwide mortgage licensing system and registry subject to the provisions contained in section 13-10-15.

**SECTION 15. AMENDMENT.** Section 13-10-03 of the North Dakota Century Code is amended and reenacted as follows:

### **13-10-03. License and registration required.**

1. An individual, unless specifically exempted from this chapter under subsection 3, shall not engage in the business of a mortgage loan originator with respect to any dwelling located in this state without first obtaining and maintaining annually a license under this chapter. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry.
2. ~~To facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, the effective date for subsection 1 is August 1, 2009, or such later date approved by the secretary of the United States department of housing and urban development, pursuant to the authority granted under Public Law 110-289, section 1508(a). All persons subject to licensing under this section, who are currently licensed under chapter 13-04.1, shall continue to be subject to licensure under chapter 13-04.1 until January 1, 2010, when they shall be required to be licensed under this chapter. If at any point before January 1, 2010, a person subject to licensing under this section fails to be licensed under chapter 13-04.1, that person shall be required to be licensed under this chapter.~~
3. The following are exempt from this chapter:
  - a. Registered mortgage loan originators, when acting for an entity described in subdivision a of subsection 11 of section 13-10-02 are exempt from this chapter.
  - b. Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual.
  - c. Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence.
  - d. A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a

lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator.

- 4-3. A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless such independent contractor loan processor or underwriter obtains and maintains a license under subsection 1. Each independent contractor loan processor or underwriter licensed as a mortgage loan originator must have and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry.
- 5-4. To implement an orderly and efficient licensing process, the commissioner may establish licensing rules or regulations and interim procedures for licensing and acceptance of applications. For previously registered or licensed individuals, the commissioner may establish expedited review and licensing procedures.

**SECTION 16. AMENDMENT.** Subsection 6 of section 13-10-16 of the North Dakota Century Code is amended and reenacted as follows:

6. In order to carry out the purposes of this section, the commissioner may:
- a. Retain ~~attorneys~~, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;
  - b. Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this section;
  - c. Use, hire, contract, or employ publicly or privately available analytical systems, methods, or software to examine or investigate the licensee, individual, or person subject to this chapter;
  - d. Accept and rely on examination or investigation reports made by other government officials, within or without this state; or
  - e. Accept audit reports made by an independent certified public accountant for the licensee, individual, or person subject to this chapter in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the commissioner.

Approved April 19, 2011  
Filed April 19, 2011

## CHAPTER 106

### HOUSE BILL NO. 1080

(Industry, Business and Labor Committee)  
(At the request of the Department of Financial Institutions)

AN ACT to create and enact sections 13-05-04.1, 13-05-04.2, 13-05-05.1, and 13-05-06.3 of the North Dakota Century Code, relating to surety bonds, minimum net worth, notice regarding change of name and address, and prohibited acts and practices of licensed collection agencies; to amend and reenact subsection 2 of section 6-08-16 and sections 13-05-01.1, 13-05-02.1, 13-05-02.3, 13-05-03, 13-05-04, 13-05-06, 13-05-06.1, 13-05-06.2, 13-05-07, and 13-05-08 of the North Dakota Century Code, relating to the definitions of creditor and insolvent, branch offices, entities exempt from licensing, forms for application for licensing, powers of the department of financial institutions, suspension and removal of agency officers and employees, investigations and subpoenas, agency recordkeeping, and revocation of licenses for collection agencies.

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

<sup>42</sup> **SECTION 1. AMENDMENT.** Subsection 2 of section 6-08-16 of the North Dakota Century Code is amended and reenacted as follows:

2. The grade of an offense under this section may be determined by individual or aggregate totals of insufficient funds checks, drafts, electronic funds transfer authorizations, or orders. The person is also liable for collection fees or costs, not in excess of thirty dollars, which are recoverable by the holder, or its agent or representative, of the check, draft, electronic funds transfer authorization, or order. If the holder of the check, draft, electronic funds transfer authorization, or order or the holder's agent or representative uses the automated clearinghouse network to collect the collection fees or costs, that person shall comply with the network's rules and requirements. A collection agency shall reimburse the original holder of the check, draft, electronic funds transfer authorization, or order any additional charges assessed by the depository bank of the check, draft, electronic funds transfer authorization, or order ~~not in excess of two dollars~~ if recovered by the collection agency. If the person does not pay the instrument in full and any collection fees or costs not in excess of thirty dollars within ten days from receipt of the notice of dishonor provided for in subsection 4, a civil penalty is also recoverable by civil action by the holder, or its agent or representative, of the check, draft, electronic funds transfer authorization, or order. The civil penalty consists of payment to the holder, or its agent or representative, of the instrument of the lesser of two hundred dollars or three times the amount of the instrument. The court may order an individual convicted under this section to undergo an evaluation by a licensed gaming, alcohol, or drug addiction counselor.

**SECTION 2. AMENDMENT.** Section 13-05-01.1 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>42</sup> Section 6-08-16 was also amended by section 1 of Senate Bill No. 2158, chapter 77.

### 13-05-01.1. Definitions.

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

1. "Collection agency" means a person or entity who, in the ordinary course of business, engages in debt collection.
2. "Commissioner" means the commissioner of financial institutions.
3. "Communication" means the conveyance or receipt of information regarding or facilitating the collection of a debt, directly or indirectly, to or from any person through any medium.
4. "Creditor" means a person who offers or extends credit creating a debt or to whom a debt is owed, but that term does not include a person to the extent that that person receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of that debt ~~for another~~.
5. "Debt" means an obligation or alleged obligation to pay money arising out of a transaction, whether or not the obligation has been reduced to a judgment.
6. "Debt collection" means the act of collecting or attempting to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. As used in this chapter, this term also includes solicitation of debts for the purpose of collection and accepting assignment of debts for the purpose of collection.
7. "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 only include assets that have a physical existence and are capable of being assigned a value.
8. "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 3. AMENDMENT.** Section 13-05-02.1 of the North Dakota Century Code is amended and reenacted as follows:

#### 13-05-02.1. Branch offices.

~~A collection agency licensed under this chapter is permitted to operate and maintain branch offices provided the collection agency license was issued in a North Dakota location. Branch offices are permitted without limitations or restrictions as to number or geographic location. The commissioner may grant approval for each branch office which must be submitted by an application. When used in this chapter, "branch office" means a physical location where collection activity is carried out, other than the location where the collection agency license was granted and where a collection agency collects or receives payments within a building site, but does not include a virtual office. As used in this chapter, "virtual office" means a remote location from which employees can work under the full control and monitoring of the collection agency through telecommunications and computer links. Records may not be maintained at a virtual office and a virtual office may not be held open to the public as a place of business.~~

**SECTION 4. AMENDMENT.** Section 13-05-02.3 of the North Dakota Century Code is amended and reenacted as follows:

**13-05-02.3. Entities exempt from licensing requirements.**

This chapter does not apply to:

1. Attorneys at law who are licensed to practice in the state of North Dakota. This exemption is limited to the actions of the licensed attorney and does not extend to persons either employed by the attorney or acting on behalf of the attorney;
2. Licensed real estate brokers;
3. Banks;
4. Trust companies;
5. Building and loan associations;
6. Credit unions;
7. Agencies of a state or of the federal government;
8. Abstract companies doing an escrow business;
9. Creditors collecting their own debts;
10. Mortgage servicing company;
11. Individuals or firms who purchase or take accounts receivable for collateral purposes;
12. Individuals employed in the capacity of creditmen upon the staff of an employer not engaged in the business of a collection agency; or
13. A public officer, receiver, or trustee acting under the order of a court; ~~or~~
14. ~~A person whose activities are limited to collecting debts from debtors located in this state by means of interstate communications, including telephone, mail, or facsimile transmission from the person's location in another state if the person is licensed and bonded in that state and that state has enacted similar legislation.~~

**SECTION 5. AMENDMENT.** Section 13-05-03 of the North Dakota Century Code is amended and reenacted as follows:

**13-05-03. Application for a collection agency license.**

Every application for a collection agency license, or for a renewal thereof, must be made upon ~~blank forms~~ furnished by the department of financial institutions and must contain the following information:

1. The full name and proposed business name of the applicant.
2. The address where the business is to be conducted.
3. The names and addresses of the applicant and those associated with the applicant. If the applicant is a corporation, the application must contain the

names of the officers of the corporation. If the applicant is a limited liability company, the application must contain the names of the managers of the limited liability company. The applicant must register with the North Dakota secretary of state if so required.

4. Such additional information which the department of financial institutions shall require.

**SECTION 6. AMENDMENT.** Section 13-05-04 of the North Dakota Century Code is amended and reenacted as follows:

**13-05-04. Application requirements - Fee and ~~bond~~ to accompany application for collection agency license.**

The application for a collection agency license must be in writing, under oath, and in the form prescribed by the commissioner. The application must give the location where the business is to be conducted and must contain any further information the commissioner requires, including the names and addresses of the partners, officers, directors, trustees, and the principal owners or members as will provide the basis for the investigation and findings contemplated by section 13-05-03. At the time of making such application, the applicant shall include payment in the sum of four hundred dollars, which is not subject to refund, as a fee for investigating the application, and the sum of three hundred dollars for the annual license ~~fee, and provide a surety bond in the sum of twenty thousand dollars.~~ In addition, the applicant shall pay a fifty dollar annual fee for each branch location. Fees must be deposited in the financial institutions regulatory fund.

**SECTION 7.** Section 13-05-04.1 of the North Dakota Century Code is created and enacted as follows:

**13-05-04.1. Surety bond required.**

1. Each licensee shall maintain a surety bond in the amount of twenty 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 8.** Section 13-05-04.2 of the North Dakota Century Code is created and enacted as follows:

**13-05-04.2. Minimum net worth required.**

A minimum net worth must be continuously maintained by every licensee in accordance with this section.

1. Minimum net worth must be maintained in the amount of twenty-five thousand dollars.
2. If the net worth of a licensee falls below the minimum net worth as set forth in subsection 1, the licensee shall provide a plan, subject to the approval of the

commissioner, to increase the licensee's net worth to an amount in conformance with this section. Submission of a plan under this section must be made within twenty business days of a notice from the commissioner that the licensee is not in compliance with subsection 1. If the licensee does not submit a plan under this section, fails to comply with an approved plan, or has repeated violations of subsection 1, the commissioner may revoke the license.

**SECTION 9.** Section 13-05-05.1 of the North Dakota Century Code is created and enacted as follows:

**13-05-05.1. Change of name or address.**

A licensee is required to submit within twenty business days of the date of change, notification of a change of name or change of address. The notification must be in the form prescribed by the commissioner. In addition, the licensee shall submit the original license certificate for reissue.

**SECTION 10. AMENDMENT.** Section 13-05-06 of the North Dakota Century Code is amended and reenacted as follows:

**13-05-06. Powers of the department of financial institutions.**

Insofar as consistent with other provisions of law, the department of financial institutions has the power to:

1. Determine the qualifications of all applicants based on financial responsibility, financial condition, business experience, character, and general fitness which most reasonably warrant the belief that the applicant's business will be conducted lawfully and fairly. In determining whether this qualification is met, and for the purpose of investigating compliance with this chapter, the commissioner may review and consider the relevant business records and capital adequacy of the applicant and the competence, experience, integrity, and financial ability of a person who is a member, partner, director, officer, or twenty-five percent or more shareholder of the applicant.
2. Conduct investigations and make an examination of any licensee or licensee's place of business, including all records of such business, and to subpoena witnesses anytime it has reason to believe such is necessary to ensure and enforce compliance with state and federal rules and regulations. The licensee shall pay an examination or visitation fee and must be charged by the department of financial institutions at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the examination or visitation provided for by this section. Fees must be paid to the state treasurer and deposited in the financial institutions regulatory fund.
3. Establish codes of ethical conduct for licensees.
4. Adopt any and all rules and regulations necessary to carry out the purpose of this chapter.
5. Issue and serve upon any person or licensed collection agency an order to cease and desist to take corrective action when the department has reason to believe the person or agency is violating, has violated, or is about to violate the provisions of this chapter. An interested party may appeal issuance of a



cease and desist order under the provisions of chapter 28-32 by filing written notice of appeal within twenty days after service of the order.

6. If the commissioner determines a licensee is insolvent, or the license has expired or terminated for any reason, the commissioner, on determining such action necessary to protect the public interest, may apply to the district court for the county in which the main office of such licensee is located for appointment of a receiver to receive the assets of the licensee for the purpose of liquidating its business or for such other relief as the nature of the case and the interest of the claimants may require. The reasonable and necessary expenses of the receivership shall constitute the first claim on the bond.

**SECTION 11. AMENDMENT.** Section 13-05-06.1 of the North Dakota Century Code is amended and reenacted as follows:

**13-05-06.1. Suspension and removal of collection agency officers or employees.**

1. The commissioner of financial institutions may issue and serve upon any current or former collection agency officer or employee and upon the collection agency involved ~~a complainant order~~ stating ~~the basis for the commissioner's belief that the:~~
  - a. ~~That the current or former~~ officer or employee is willfully engaging or has willfully engaged in any of the following conduct:
    - ~~a.~~(1) Violating any law, rule, order, or written agreement with the commissioner;
    - ~~b.~~(2) Engaging in any harassment or abuse, the making of false or misleading representations, or engaging in unfair practices involving collection activity;
    - ~~e.~~(3) Performing any act of commission or omission or practice which is a breach of trust or a breach of fiduciary duty.
  - b. The term of the suspension or removal from employment and participation within the conduct or the affairs of a collection agency.
2. ~~The complaint order~~ must contain a notice of opportunity for hearing pursuant to chapter 28-32.
3. If no hearing is requested within twenty business days of the date the ~~complaint order~~ is served ~~upon the officer or employee~~, or if a hearing is held and the commissioner finds that the record so warrants, the commissioner may enter ~~an a final~~ order suspending or ~~temporarily~~ removing the current or former officer or employee ~~or officer from office for a period not exceeding three years from the effective date of the suspension or temporary removal. The current or former officer or employee shall have the opportunity to request a termination of the final order after a period of no less than three years.~~
4. A contested or default suspension or ~~temporary~~ removal order is effective immediately upon service of the final order on the current or former officer or employee and upon the collection agency. A consent order is effective as agreed. ~~Any current or former~~ officer or employee suspended or ~~temporarily~~ removed from ~~office~~ employment and participation within the conduct or the

affairs of a collection agency pursuant to this section is not eligible, while under suspension, ~~for reinstatement to any position within a licensed collection agency or removal, to be employed or otherwise participate in the affairs of any financial corporation, financial institution, credit union, or any other entity licensed by the department of financial institutions.~~

5. When ~~any~~ any current or former officer or employee, or other person participating in the conduct of the affairs of a collection agency is charged with a felony in state or federal court which involves dishonesty or breach of trust, the commissioner may immediately suspend the person from office or prohibit the person from any further participation in the collection agency's affairs, or both. The order is effective immediately upon service of the order on the collection agency and the person charged and remains in effect until the criminal charge is finally disposed of or until modified by the commissioner. If a judgment of conviction, federal pretrial diversion, or similar state order or judgment is entered, the commissioner may order that the suspension or prohibition be made permanent. A finding of not guilty or other disposition of the charge does not preclude the commissioner from pursuing administrative or civil remedies.
6. Under this section, a person engages in conduct "willfully" if the person acted intentionally in the sense that the person was aware of what the person was doing.

**SECTION 12. AMENDMENT.** Section 13-05-06.2 of the North Dakota Century Code is amended and reenacted as follows:

**13-05-06.2. Investigations and subpoenas.**

1. The department of financial institutions may:
  - a. Make such public or private investigation within or outside this state as it deems necessary to determine whether a person has violated or is about to violate a provision of this chapter or a rule or order under this chapter, or to aid in the enforcement of this chapter or in the adopting of rules and forms under this chapter.
  - b. Require or permit a person to file a statement in writing, under oath or otherwise as the department determines, as to all the facts and circumstances concerning the matter to be investigated.
  - c. Publish information concerning a violation of this chapter or a rule or order under this chapter.
2. For the purpose of an investigation or proceeding under this chapter, the department of financial institutions may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of books, papers, correspondence, memoranda, agreements, or other documents or records which the department deems relevant or material to the inquiry.
3. In case of contumacy by, or refusal to obey a subpoena issued to, a person, the district court, upon application by the department of financial institutions, may issue to the person an order requiring the person to appear before the department, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to

obey the order of the court may be punished by the court as a contempt of court.

4. A person is not excused from attending and testifying or from producing a document or record before the department of financial institutions, or in obedience of the subpoena of the department or in a proceeding instituted by the department, on the grounds that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture; but an individual may not be prosecuted or subjected to a penalty or forfeiture for or on account of a transaction, matter, or thing concerning which the person is compelled, after claiming the privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.
5. In making any examination or investigation authorized by this chapter, the commissioner may control access to any documents and records of the licensee or person under examination or investigation. The commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no individual or person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the commissioner. Unless the commissioner has reasonable grounds to believe any of the documents and records of the licensee have been, or are at risk of being altered or destroyed for purposes of concealing a violation of this chapter, the licensee or owner of the documents and records shall have access to the documents and records as necessary to conduct its ordinary business affairs. All records controlled by the commissioner under the authority of this subsection shall be exempt under the open records law.
6. In order to carry out the purposes of this section, the commissioner may:
  - a. Retain accountants or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations; and
  - b. Use, hire, contract, or employ publicly or privately available analytical systems, methods, or software to examine or investigate the licensee, individual, or person subject to this chapter.
7. The authority of this section remains in effect, whether such a licensee, individual, or person subject to this chapter acts or claims to act under any licensing or registration law of this state or claims to act without such authority.

**SECTION 13.** Section 13-05-06.3 of the North Dakota Century Code is created and enacted as follows:

**13-05-06.3. Prohibited acts and practices.**

It is a violation of this chapter for a person or individual subject to this chapter to:

1. Negligently make any false statement or knowingly make any omission of material fact in connection with any information, reports, or applications filed with the department or another governmental agency.

2. Collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by this chapter.
3. Fail to truthfully account for moneys belonging to or collected from another.

**SECTION 14. AMENDMENT.** Section 13-05-07 of the North Dakota Century Code is amended and reenacted as follows:

**13-05-07. Manner in which records and funds to be kept by collection agency.**

1. Every collection agency licensed under this chapter shall keep a record of all sums collected by it and of all disbursements made by it for a period of six years from the date of last entry thereon. The records of a licensee may be maintained electronically provided they can be reproduced upon request of the department of financial institutions and within the required statutory time period provided in this section.
2. When a licensee ceases operations for any reason, the licensee shall be required to inform the department of the location of the records required to be maintained in accordance with section 13-05-07. In addition, the licensee shall provide the name of the individual responsible for maintenance of the records. The licensee shall notify the department within ten business days of the change of the location of the records or the change of the individual responsible for maintenance of the records.
3. No collection agency, or any employees thereof, licensee, individual, or person subject to investigation or examination under this section may intentionally make any false entry in any such collection agency record or intentionally knowingly withhold, abstract, secrete, remove, mutilate, destroy, or otherwise dispose of any such record, books, records, computer records, or other information within the time limit provided in this section.
4. No licensee under this chapter may commingle the money of collection agency customers with other than collection funds and shall maintain a separate bank account for such customer's funds and shall keep such funds in the bank account until disbursed to the customer.

**SECTION 15. AMENDMENT.** Section 13-05-08 of the North Dakota Century Code is amended and reenacted as follows:

**13-05-08. Revocation of license - Suspension of license - Surrender of license - Preexisting contracts.**

1. The department of financial institutions commissioner may, if it has reason to believe that grounds for revocation of a license exist, send by registered or certified mail to the licensee, a notice of hearing stating the contemplated action and in general the grounds thereof and setting the time and place for a hearing thereon. Such hearing may not be held less than ten nor more than thirty days from the date of mailing such notice. Within ten days after such hearing, the department of financial institutions shall issue a written order either dismissing the charges or suspending or revoking the license and the grounds therefor. A copy of such written order must be sent to the licensee. A license may be revoked for one or more of the following reasons issue and serve upon any licensee an order suspending or revoking a licensee's license if the commissioner finds that:

- a. The licensee has failed to pay the annual license fee under this chapter or any examination fee imposed by the commissioner under the authority of this chapter.
  - b. The licensee, either knowingly or without the exercise of due care to prevent the same, has violated any provision of this chapter or any regulation or order lawfully made pursuant to and within the authority of this chapter.
  - c. Any fact or condition existing at the time of the original application for such license which clearly would have warranted the department of financial institutions in refusing originally to issue such license.
  - d. The licensee has failed to maintain the required bond.
  - e. The licensee has failed to maintain registration with the North Dakota secretary of state if so required.
2. The order must contain a notice of opportunity for hearing pursuant to chapter 28-32.
  3. If no hearing is requested within twenty business days of the date the order is served upon the licensee, or if a hearing is held and the commissioner finds that the record so warrants, the commissioner may enter a final order suspending or revoking the license.
- ~~2.4.~~ If the ~~department of financial institutions~~ commissioner finds that probable cause for revocation of any license exists and that enforcement of the chapter requires immediate suspension of such license pending investigation, it may, upon written notice, enter an order suspending such license for a period not exceeding ~~thirty~~ sixty days, pending the holding of a hearing as prescribed in this chapter.
  - ~~3.5.~~ Any licensee may surrender the licensee's license by delivering it to the department of financial institutions with written notice of its surrender, but such surrender does not affect the licensee's civil or criminal liability for acts committed prior thereto.

Approved April 19, 2011  
Filed April 19, 2011

## CHAPTER 107

### HOUSE BILL NO. 1130

(Industry, Business and Labor Committee)  
(At the request of the Department of Financial Institutions)

AN ACT to create and enact section 13-08-05.1 and two new sections to chapter 13-09 of the North Dakota Century Code, relating to notice regarding change of name and address of licensed deferred presentment service providers and money transmitters and prohibited acts and practices of licensed money transmitters; to amend and reenact sections 13-08-02 and 13-08-11, subsection 6 of section 13-08-12, sections 13-08-14 and 13-08-14.1, subsection 7 of section 13-09-02, subsection 3 of section 13-09-14, and section 13-09-17 of the North Dakota Century Code, relating to license requirements, retention of records, licensee transaction procedures, suspension and revocation of license, suspension and removal of agency officers and employees, definition of electronic instruments regarding deferred presentment service providers, and money transmitters; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 13-08-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **13-08-02. License requirements.**

A person may not engage in the business of deferred presentment service without a license issued under this chapter. A separate license is required for each location from which the business of deferred presentment service is conducted. A person is considered to be engaging in the business of deferred presentment service if the customer is located in this state.

**SECTION 2.** Section 13-08-05.1 of the North Dakota Century Code is created and enacted as follows:

##### **13-08-05.1. Change of name or address.**

A licensee shall submit within twenty business days of the date of change, notification of a change of name or change of address. The notification must be in the form prescribed by the commissioner. In addition, the licensee shall submit the original license certificate for reissue.

**SECTION 3. AMENDMENT.** Section 13-08-11 of the North Dakota Century Code is amended and reenacted as follows:

##### **13-08-11. Retention of records.**

Each licensee shall keep and use in the licensee's business any books, accounts, and records the commissioner may require to carry into effect the provisions of this chapter and the rules issued under this chapter. Every licensee shall preserve required books, accounts, and records for at least six years. The records of a licensee may be maintained electronically provided they can be reproduced upon request by

the department of financial institutions and within the required statutory time period provided in this section. When a licensee ceases operations for any reason, the licensee shall inform the department of the location of the records. In addition, the licensee shall provide the name of the individual responsible for maintenance of the records. The licensee shall notify the department within ten business days of the change of the location of the records or the change of the individual responsible for maintenance of the records.

**SECTION 4. AMENDMENT.** Subsection 6 of section 13-08-12 of the North Dakota Century Code is amended and reenacted as follows:

6. Each deferred presentment service transaction, including a renewal, must be documented by a written agreement signed or similarly authenticated by the customer. The original agreement must contain the name of the licensee; the transaction date; the amount of the obligation; ~~and~~ a statement of the total amount of fees charged, expressed as a dollar amount and as an annual percentage rate; the name and signature of the individual who signs the agreement on behalf of the licensee; the name and address of the check maker; the transaction number assigned by the database; the date of negotiation of the check; the signature of the check maker; a statement that a licensee may not renew a transaction more than once; a statement that the renewal fee may not exceed twenty percent of the amount being renewed; the maximum term of the transaction, including a statement that the renewal may not exceed sixty business days; a statement that the term of the renewal period may not be less than fifteen business days; and a statement containing the right of rescission printed immediately above the signature line of the written agreement in a minimum of ten-point font and providing a space for the check maker to initial that the notice to the right of rescission was received. The original agreement may not include a hold harmless clause; a confession of judgment clause; any assignment of or order for payment of wages or other compensation for services; a provision in which the check maker agrees not to assert any claim or defense arising out of the agreement; a waiver of any provision of this chapter; any representation from the check maker as to the sufficiency of funds regarding any past deferred presentment service transactions; or any statement regarding criminal prosecution with respect to the agreement. A renewal agreement must be contained in a separate section, as part of the original written agreement or in other form as approved by the commissioner. The renewal agreement must restate the original transaction date, the renewal transaction date, the amount of the check paid to the check maker, the fee charged in dollars, and the maturity date. The agreement must authorize the licensee to defer presentment or negotiation of the check, or electronic debit of the customer's account, until a specified date. The maker of a check may redeem the check from the licensee at any time before the negotiation or presentment of the check by making payment to the licensee. A customer agreeing to an electronic deferred presentment service transaction may repay the obligation at any time before the agreed-upon date. A customer may rescind any transaction by the close of the business day following the day on which the customer receives payment from the licensee at no cost. If a customer agreeing to an electronic deferred presentment service transaction rescinds the transaction, the licensee must facilitate the repayment of the funds through the same electronic means the licensee used to deliver the funds to the customer.

**SECTION 5. AMENDMENT.** Section 13-08-14 of the North Dakota Century Code is amended and reenacted as follows:

**13-08-14. Suspension - Revocation.**

1. ~~After notice and hearing, the~~The commissioner may ~~suspend or revoke~~issue ~~and serve upon any licensee an order suspending or revoking~~ a license if the commissioner finds that the licensee or any principal of the licensee has been convicted of a felony or that the licensee knowingly or through lack of due care:
  - a. Failed to pay the annual license fee imposed under this chapter or any examination fee imposed by the commissioner under the authority of this chapter;
  - b. Committed any fraud, engaged in any dishonest activities, or made any misrepresentations;
  - c. Violated this chapter or any rule adopted under this chapter or violated any other law in the course of the licensee's business activities as a licensee;
  - d. Made false statements in the application for the license; or
  - e. Engaged in any unfair or deceptive acts, practices, or advertising in the conduct of a deferred presentment service business;
  - f. Failed to maintain the required bond; or
  - g. Failed to maintain registration with the secretary of state if so required.
2. ~~Written notice must be given at least twenty days before the date of a hearing under this chapter. The order must contain a notice of opportunity for hearing pursuant to chapter 28-32.~~
3. If a hearing is not requested within twenty business days of the date the order is served upon the licensee or if a hearing is held and the commissioner finds that the record so warrants, the commissioner may enter a final order suspending or revoking the license.
4. If the commissioner finds that probable cause for revocation of any license exists and that enforcement of the chapter requires immediate suspension of such license pending investigation, it may upon written notice enter an order temporarily suspending such license for a period not exceeding sixty days, pending the holding of a hearing as prescribed in this chapter.

**SECTION 6. AMENDMENT.** Section 13-08-14.1 of the North Dakota Century Code is amended and reenacted as follows:

**13-08-14.1. Suspension and removal of deferred presentment service provider officers and employees.**

1. The commissioner of financial institutions may issue and serve upon ~~any current or former~~ deferred presentment service provider officer or employee and upon the licensee involved ~~a complainant order~~ stating the basis for the commissioner's belief that the:
  - a. That the current or former officer or employee is willfully engaging or has willfully engaged in any of the following conduct:



- a. (1) Violating a law, rule, order, or written agreement with the commissioner;
  - b. (2) Engaging in harassment or abuse, the making of false or misleading representations, or engaging in unfair practices involving lending activity;
  - c. (3) Performing an act of commission or omission or practice, which is a breach of trust or a breach of fiduciary duty.
  - b. The term of suspension or removal from employment and participation within the conduct or the affairs of a deferred presentment service provider.
2. The complaint order must contain a notice of opportunity for hearing pursuant to chapter 28-32.
  3. If a hearing is not requested within twenty business days of the date the complaint order is served ~~upon the officer or employee~~, or if a hearing is held and the commissioner finds that the record so warrants, the commissioner may enter ~~an~~ a final order suspending or ~~temporarily~~ removing the current or former employee or officer from office ~~for a period not exceeding three years from the effective date of the suspension or temporary removal~~. The current or former officer or employee may request a termination of the final order after a period of no less than three years.
  4. A contested or default suspension or ~~temporary~~ removal order is effective immediately upon service of the final order on the current or former officer or employee and upon the licensee. A consent order is effective as agreed. ~~Any current or former officer or employee suspended or temporarily removed from office~~employment and participation within the conduct or the affairs of a deferred presentment service provider pursuant to this section is not eligible, while under suspension, for reinstatement to a position within a licensed deferred presentment service provider or removal, to be employed or otherwise participate in the affairs of any financial corporation, financial institution, credit union, or any other entity licensed by the department of financial institutions.
  5. When ~~any~~ any current or former officer or employee or other person participating in the conduct of the affairs of a licensee is charged with a felony in state or federal court which involves dishonesty or breach of trust, the commissioner may immediately suspend the person from office or prohibit the person from further participation in the deferred presentment service provider affairs, or both. The order is effective immediately upon service of the order on the licensee and the person charged and remains in effect until the criminal charge is finally disposed of or until modified by the commissioner. If a judgment of conviction, federal pretrial diversion, or similar state order or judgment is entered, the commissioner may order that the suspension or prohibition be made permanent. A finding of not guilty or other disposition of the charge does not preclude the commissioner from pursuing administrative or civil remedies.
  6. Under this section, a person engages in conduct "willfully" if the person acted intentionally in the sense that the person was aware of what the person was doing.

**SECTION 7. AMENDMENT.** Subsection 7 of section 13-09-02 of the North Dakota Century Code is amended and reenacted as follows:

7. "Electronic instrument" means a card or other tangible object for the transmission or payment of money that contains a microprocessor chip, magnetic strip, or other means for the storage of information, that is prefunded and for which the value is decremented upon each use, but does not include a card or other tangible object that is redeemable by the issuer in goods or services provided by the issuer or its affiliates.

**SECTION 8. AMENDMENT.** Subsection 3 of section 13-09-14 of the North Dakota Century Code is amended and reenacted as follows:

3. Records may be maintained at a location other than within this state so long as the records are made accessible to the commissioner on seven business days' written notice. When a licensee ceases operations for any reason, the licensee shall inform the department of the location of the records. In addition, the licensee shall provide the name of the individual responsible for maintenance of the records. The licensee shall notify the department within ten business days of the change of the location of the records or the change of the individual responsible for maintenance of the records.

**SECTION 9. AMENDMENT.** Section 13-09-17 of the North Dakota Century Code is amended and reenacted as follows:

**13-09-17. Suspension or revocation of licenses.**

1. The commissioner may ~~suspend or revoke~~ issue and serve upon any licensee an order suspending or revoking a licensee's license if the commissioner finds that:
  4. a. Any fact or condition exists that, if it had existed at the time when the licensee applied for its license, would have been grounds for denying such application;
  2. b. The licensee's net worth becomes inadequate and the licensee, after ten days' written notice from the commissioner, fails to take such steps as the commissioner deems necessary to remedy such deficiency;
  3. c. The licensee knowingly violates any material provision of this chapter or any rule or order validly adopted by the commissioner under authority of this title;
  4. d. The licensee is conducting its business in an unsafe or unsound manner;
  5. e. The licensee is insolvent;
  6. f. The licensee has suspended payment of its obligations, made an assignment for the benefit of its creditors, or admitted in writing its inability to pay its debts as they become due;
  7. g. The licensee has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under any bankruptcy;
  8. h. The licensee refuses to permit the commissioner to make any examination authorized by this chapter; ~~or~~

9.
  - i. The licensee willfully fails to make any report required by this chapter;
  - j. The licensee has failed to pay the annual license fee imposed under this chapter or any examination fee imposed by the commissioner under the authority of this chapter;
  - k. The licensee has failed to maintain the required bond or other security device; or
  - l. The licensee has failed to maintain registration with the secretary of state if so required.
2. The order must contain a notice of opportunity for hearing pursuant to chapter 28-32.
3. If a hearing is not requested within twenty business days of the date the order is served upon the licensee or if a hearing is held and the commissioner finds that the record so warrants, the commissioner may enter a final order suspending or revoking the license.
4. If the commissioner finds that probable cause for revocation of any license exists and that enforcement of the chapter requires immediate suspension of such license pending investigation, it may upon written notice enter an order temporarily suspending such license for a period not exceeding sixty days, pending the holding of a hearing as prescribed in this chapter.

**SECTION 10.** A new section to chapter 13-09 of the North Dakota Century Code is created and enacted as follows:

**Change of name or address.**

A licensee is required to submit within twenty business days of the date of change notification of a change of name or change of address. The notification must be in the form prescribed by the commissioner. In addition, the licensee shall submit the original license certificate for reissue.

**SECTION 11.** A new section to chapter 13-09 of the North Dakota Century Code is created and enacted as follows:

**Prohibited acts and practices.**

It is a violation of this chapter for a person or individual subject to this chapter to knowingly:

1. Subscribe to, or make or cause to be made, any material false statement or representation in any application or other document or statement required to be filed under any provision of this chapter, or to omit to state any material statement or fact necessary in order to make the statements made, in light of the circumstances under which the statements are made, not misleading.
2. Directly or indirectly, employ any device, scheme, or artifice to defraud or mislead any person.
3. Directly or indirectly, make any untrue statement of a material fact or to omit to state a material fact.

4. Engage in any unfair or deceptive practice toward any person.
5. Conduct or solicit any business covered by this chapter without holding a valid license as required under this chapter or assist or aid and abet any person in the conduct of business under this chapter without a valid license as required under this chapter.
6. Fail to make disclosures as required by this chapter and any other applicable state or federal law and regulations.
7. Fail to comply with this chapter or rules adopted under this chapter or fail to comply with any other state or federal law, including the rules and regulations thereunder, applicable to any business authorized or conducted under this chapter.
8. Make, in any manner, any false or deceptive statement or representation.
9. Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or in connection with any investigation conducted by the commissioner or another governmental agency.
10. Collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by this chapter.
11. Fail to truthfully account for moneys belonging to or collected from another.

Approved April 11, 2011  
Filed April 11, 2011

## CHAPTER 108

### HOUSE BILL NO. 1038

(Legislative Management)  
(Judiciary Committee)

AN ACT to create and enact chapter 13-11 of the North Dakota Century Code, relating to the regulation of debt-settlement providers; to amend and reenact subsection 1 of section 6-01-01.1 and section 13-07-01 of the North Dakota Century Code, relating to the financial institutions regulatory fund and the definition of consumer credit counseling service; to repeal chapter 13-06 of the North Dakota Century Code, relating to regulation of debt adjusters; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 6-01-01.1 of the North Dakota Century Code is amended and reenacted as follows:

1. There is hereby created a special fund designated as the financial institutions regulatory fund. The amounts received under the following chapters, and any other moneys received by the department of financial institutions, must be deposited into this fund: chapters 6-01, 6-03, 6-05, 6-06, 6-10, 13-04.1, 13-05, 13-08, 13-09, and 13-10, and 13-11.

**SECTION 2. AMENDMENT.** Section 13-07-01 of the North Dakota Century Code is amended and reenacted as follows:

#### **13-07-01. Consumer credit counseling service - Definition.**

As used in this chapter, "consumer credit counseling service" means a nonprofit corporation ~~engaged in the business of debt adjusting as defined in section 13-06-04 whose agreements contemplate that a debtor will liquidate the debtor's debts by structured installments or that a creditor will reduce finance charges or fees for late payments, default, or delinquency.~~ For purposes of this chapter, a nonprofit corporation means an entity that is:

1. Organized and properly operating as a nonprofit entity under the laws of the state in which it was formed;
2. Exempt from taxation under the federal Internal Revenue Code [26 U.S.C. 501]; and
3. Not owned, operated, managed by, or affiliated with a for-profit entity.

**SECTION 3.** Chapter 13-11 of the North Dakota Century Code is created and enacted as follows:

#### **13-11-01. Definitions.**

For the purposes of this chapter:

1. "Affiliate":

a. With respect to an individual, means:

- (1) The spouse of the individual;
- (2) A sibling of the individual or the spouse of a sibling;
- (3) An individual or the spouse of an individual who is a lineal ancestor or lineal descendant of the individual or the individual's spouse;
- (4) An aunt, uncle, great aunt, great uncle, first cousin, niece, nephew, grandniece, or grandnephew, whether related by the whole or the half blood or adoption, or the spouse of any of them; or
- (5) Any other individual occupying the residence of the individual; and

b. With respect to an entity, means:

- (1) A person that directly or indirectly controls, is controlled by, or is under common control with the entity;
  - (2) An officer of, or an individual who performs similar functions with respect to, the entity;
  - (3) A director of, or an individual who performs similar functions with respect to, the entity;
  - (4) A person that receives or received more than twenty-five thousand dollars from the entity in either the current year or the preceding year or a person that owns more than ten percent of, or an individual who is employed by or is a director of, a person that receives or received more than twenty-five thousand dollars from the entity in either the current year or the preceding year;
  - (5) An officer or director of, or an individual performing similar functions with respect to, a person described in paragraph 1;
  - (6) The spouse of, or an individual occupying the residence of, an individual described in paragraphs 1 through 5; or
  - (7) An individual who has the relationship specified in paragraph 4 of subdivision a to an individual or the spouse of an individual described in paragraphs 1 through 5.
2. "Commissioner" means the commissioner of the department of financial institutions.
3. "Consumer" means any person who purchases or contracts for the purchase of debt-settlement services.
4. "Consumer settlement account" means any account or other means or device in which payments, deposits, or other transfers from a consumer are arranged, held, or transferred by or to a debt-settlement provider for the accumulation of the consumer's funds in anticipation of proffering an

adjustment or settlement of a debt or obligation of the consumer to a creditor on behalf of the consumer.

5. "Contract" means a contract or other legally binding agreement between a provider and an individual for the performance of debt-management services.
6. "Debt-settlement provider" means any person engaging in, or holding itself out as engaging in, the business of providing debt-settlement service in exchange for any fee or compensation, or any person who solicits for or acts on behalf of any person engaging in, or holding itself out as engaging in, the business of providing debt-settlement service in exchange for any fee or compensation. "Debt-settlement provider" does not include:
  - a. An attorney licensed or otherwise authorized to practice in this state who is engaged in the practice of law;
  - b. An escrow agent, accountant, broker-dealer in securities, or investment advisor in securities, when acting in the ordinary practice of the person's profession and through the entity used in the ordinary practice of the person's profession;
  - c. Any bank, agent of a bank, operating subsidiary of a bank, affiliate of a bank, trust company, savings and loan association, savings bank, credit union, farm credit system institution, crop credit association, development credit corporation, industrial development corporation, title insurance company, title insurance agent, independent escrowee or insurance company operating or organized under the laws of a state or the United States, or any other person authorized to make loans under state law while acting in the ordinary practice of that business;
  - d. Any person who performs credit services for that person's employer while receiving a regular salary or wage when the employer is not engaged in the business of offering or providing debt-settlement service;
  - e. A collection agency licensed pursuant to chapter 13-05 which is collecting a debt on the collection agency's own behalf or on behalf of a third party;
  - f. A public officer while acting in the officer's official capacity and any person acting under court order;
  - g. Any person while performing services incidental to the dissolution, winding up, or liquidating of a partnership, corporation, or other business enterprise; or
  - h. Any person currently licensed under any chapter administered by the department of financial institutions or registered with the attorney general's office when acting in the ordinary practice of that person's profession and not holding oneself out as a debt-settlement provider.
7. a. "Debt-settlement service" means:
  - (1) Offering to provide advice or service, or acting as an intermediary between or on behalf of a consumer and one or more of a consumer's creditors, where the primary purpose of the advice, service, or action is to obtain a settlement, adjustment, or satisfaction of the consumer's

unsecured debt to a creditor in an amount less than the full amount of the principal amount of the debt or in an amount less than the current outstanding balance of the debt;

(2) Offering to provide services related to or providing services advising, encouraging, assisting, or counseling a consumer to accumulate funds for the primary purpose of proposing or obtaining or seeking to obtain a settlement, adjustment, or satisfaction of the consumer's unsecured debt to a creditor in an amount less than the full amount of the principal amount of the debt or in an amount less than the current outstanding balance of the debt; or

(3) Offering to provide advice or service, or acting as an intermediary between or on behalf of a person and a state or federal government agency where the primary purpose of the advice, service, or action is to obtain a settlement, adjustment, or satisfaction of the person's tax obligation to the government agency in an amount less than the current outstanding balance of the tax obligation.

b. "Debt-settlement service" does not include:

(1) Legal services provided in an attorney-client relationship by an attorney licensed or otherwise authorized to practice law in this state;

(2) Accounting services provided in an accountant-client relationship by a certified public accountant licensed to provide accounting services in this state;

(3) Financial planning services provided in a financial planner-client relationship by a member of a financial planning profession whose members the commissioner, by rule, determines are:

(a) Licensed by this state;

(b) Subject to a disciplinary mechanism;

(c) Subject to a code of professional responsibility; and

(d) Subject to a continuing education requirement; or

(4) A nonprofit corporation engaged in consumer credit counseling services under chapter 13-07.

8. "Enrollment or setup fee" means any fee, obligation, or compensation paid or to be paid by the consumer to a debt-settlement provider in consideration of or in connection with establishing a contract or other agreement with a consumer related to the provision of debt-settlement service.

9. "Maintenance fee" means any fee, obligation, or compensation paid or to be paid by the consumer on a periodic basis to a debt-settlement provider in consideration of maintaining the relationship and services to be provided by a debt-settlement provider in accordance with a contract with a consumer related to the provision of debt-settlement service.



10. "Person" means an individual, corporation, limited liability company, partnership, trust, firm, association, or other legal entity. The term does not include a public corporation, government, or governmental subdivision, agency, or instrumentality.
11. "Principal amount of the debt" means the total amount or outstanding balance owed by a consumer to one or more creditors for a debt that is included in a contract for debt-settlement service at the time when the consumer enters a contract for debt-settlement service.
12. "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.
13. "Savings" means the difference between the principal amount of the debt and the amount paid by the debt-settlement provider to the creditor or negotiated by the debt-settlement provider and paid by the consumer to the creditor pursuant to a settlement negotiated by the debt-settlement provider on behalf of the consumer as full and complete satisfaction of the creditor's claim with regard to that debt.
14. "Settlement fee" means any fee, obligation, or compensation paid or to be paid by the consumer to a debt-settlement provider in consideration of or in connection with a completed agreement or other arrangement on the part of a creditor to accept less than the principal amount of the debt as satisfaction of the creditor's claim against the consumer.
15. "Willfully" means the person acted intentionally in the sense that the person was aware of what the person was doing.

#### **13-11-02. License required.**

It is unlawful for any person to act as a debt-settlement provider except as authorized by this chapter and without first having obtained a license under this chapter. A person that engages in debt settlement is deemed to engage in debt settlement in this state if the debtor resides in this state.

#### **13-11-03. Application for license.**

Every application for a debt-settlement provider license, or for a renewal thereof, must be made upon forms designed and furnished by the commissioner and must contain any information which the commissioner determines necessary and proper. The commissioner may require any application to provide additional information that is not requested on the application form. The applicant must register with the secretary of state if so required.

#### **13-11-04. Fee and bond to accompany application for debt-settlement license.**

The application for license must be in writing, under oath, and in the form prescribed by the commissioner. The application must give the location where the business is to be conducted and must contain any further information the commissioner requires, including the names and addresses of the partners, officers, directors, trustees, and the principal owners or members, as will provide the basis for the investigation and findings contemplated by section 13-11-03. At the time of making the application, the applicant shall include payment in the sum of four hundred dollars, which is not subject to refund, as a fee for investigating the

application; the sum of four hundred dollars for the annual license fee; and provide a surety bond in the sum of fifty thousand dollars or an additional amount as required by the commissioner by rule. In addition, the applicant shall pay a fifty dollar annual fee for each branch location. Fees must be deposited in the financial institutions regulatory fund as provided under section 6-01-01.1.

### **13-11-05. Qualifications for license.**

1. Upon the filing of the application, the approval of the bond, and the payment of the specified fees, the commissioner may issue a license if the commissioner finds all of the following:
  - a. The financial responsibility, experience, character, and general fitness of the applicant, managers, partners, officers, and directors are such as to command the confidence of the community and to warrant belief that the business will be operated fairly, honestly, and efficiently within the purposes of this chapter.
  - b. The applicant, managers, partners, officers, and directors:
    - (1) Have not been convicted of a felony;
    - (2) Have not been convicted of a misdemeanor involving dishonesty or untrustworthiness; or
    - (3) Have not been the subject of an adverse finding or adjudication in a license disciplinary or other administrative proceeding concerning allegations involving dishonesty or untrustworthiness.
  - c. The applicant, managers, partners, officers, and directors have not had a record of having defaulted in the payment of money collected for others, including the discharge of those debts through bankruptcy proceedings.
  - d. The applicant or any managers, partners, officers, and directors previously have not violated any provision of this chapter or any rule adopted by the commissioner unless the commissioner determines the violation is not material.
  - e. The applicant has not made any false statement or representation to the commissioner in applying for a license under this chapter.
2. The commissioner shall deliver a license to the applicant to operate as a debt-settlement provider in accordance with this chapter at the location specified in the application. The license remains in full force and effect until it is surrendered by the debt-settlement provider or revoked by the commissioner as provided in this chapter; provided, however, that each license expires by its terms on December thirty-first next following its issuance unless renewed as provided in this chapter. A license may not be surrendered without the approval of the commissioner.

### **13-11-06. Expiration and renewal of license.**

All licenses required under this chapter expire on December thirty-first of each year and may be renewed. Renewals are effective the succeeding January first. Applications for renewal must be submitted at least thirty days before the expiration of the license and must be accompanied by the required annual fees, which are not

subject to refund. The form and content of renewal applications must be determined by the commissioner, and a renewal application may be denied upon the same grounds as would justify denial of an initial application. If a licensee has been delinquent in renewing the licensee's license, the commissioner may charge an additional fee of fifty dollars for the renewal of the license. A debt-settlement provider license is not transferable. If the commissioner determines that an ownership change has occurred in a sole proprietorship, partnership, limited liability partnership, corporation, or limited liability corporation that was previously granted a debt-settlement provider license, the commissioner may require a new application from the purchaser. The application must be filed at least thirty days before the date on which the change of ownership is consummated.

### **13-11-07. Applicant's obligation to update information.**

An applicant or licensed provider shall notify the commissioner within ten days after a change in the information provided within the application.

### **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 timeframe outlined in this section.
2. Before August 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.

### **13-11-09. Approval or denial of a license.**

Any complete application for a license must be approved or denied within sixty days after the filing of the complete application with the commissioner.

### **13-11-10. Revocation of license - Suspension of license - Surrender of license.**

1. If the commissioner has reason to believe that grounds for revocation of a license exist, the commissioner may send by certified mail to the licensee a notice of hearing stating the contemplated action and in general the grounds thereof and setting the time and place for a hearing thereon. Grounds for revocation of a license include:
  - a. Any debt-settlement provider has failed to pay the annual license fee or to maintain in effect the bond required under this chapter;
  - b. The debt-settlement provider has violated this chapter or any rule lawfully made by the commissioner implementing this chapter;
  - c. Any fact or condition exists that, if it had existed at the time of the original application for a license, would have warranted the commissioner in refusing its issuance; or
  - d. Any applicant has made any false statement or representation to the commissioner in applying for a license under this chapter.

2. If the commissioner finds that probable cause for revocation of any license exists and that enforcement of the chapter requires immediate suspension of that license pending investigation, the commissioner, upon written notice, may enter an order suspending that license for a period not exceeding thirty days, pending the holding of a hearing as prescribed in this chapter.
3. Any licensee may surrender the licensee's license by delivering the license to the commissioner with written notice of its surrender; however, surrender of the license does not affect the licensee's civil or criminal liability for acts committed before the surrender of the license.

**13-11-11. Suspension and removal of debt-settlement provider officers and employees.**

1. The commissioner may issue and serve upon a debt-settlement provider officer or employee, and upon the licensee involved, a complaint stating the basis for the commissioner's belief that the officer or employee is willfully engaging or has willfully engaged in any of the following conduct:
  - a. Violating a law, rule, order, or written agreement with the commissioner;
  - b. Engaging in harassment or abuse, the making of false or misleading representations, engaging in unfair practices involving debt settlement, or engaging in prohibited acts and practices under section 13-11-23; or
  - c. Performing an act of commission or omission or practice that is a breach of trust or a breach of fiduciary duty.
2. The complaint must contain a notice of opportunity for hearing.
3. If a hearing is not requested within twenty days of the date the complaint is served upon the officer or employee, or if a hearing is held and the commissioner finds that the record so warrants, the commissioner may enter an order suspending or temporarily removing the employee or officer from office for a period not exceeding three years from the effective date of the suspension or temporary removal.
4. A contested or default suspension or temporary removal order is effective immediately upon service of the order on the officer or employee and upon the licensee. A consent order is effective as agreed. An officer or employee suspended or temporarily removed from office pursuant to this section is not eligible, while under suspension, for reinstatement to a position with a debt-settlement provider.
5. When an officer or employee, or other person participating in the conduct of the affairs of a licensee, is charged with a felony in state or federal court which involves dishonesty or breach of trust, the commissioner immediately may suspend the person from office or prohibit the person from further participation in the affairs of the debt-settlement provider, or both. The order is effective immediately upon service of the order on the licensee and the person charged and remains in effect until the criminal charge is finally disposed of or until modified by the commissioner. If a judgment of conviction, federal pretrial diversion, or similar state order or judgment is entered, the commissioner may order that the suspension or prohibition be made permanent. A finding of not

guilty or other disposition of the charge does not preclude the commissioner from pursuing administrative or civil remedies.

### **13-11-12. Advertising and marketing practices.**

1. A debt-settlement provider may not represent, expressly or by implication, any results or outcomes of its debt-settlement services in any advertising, marketing, or other communication to consumers unless the debt-settlement provider possesses substantiation for the representation at the time the representation is made.
2. A debt-settlement provider may not make, expressly or by implication, any unfair or deceptive representations, or any omissions of material facts, in any of its advertising or marketing communications concerning debt-settlement services.
3. All advertising and marketing communications concerning debt-settlement services must disclose the following material information clearly and conspicuously: Debt-settlement services are not appropriate for everyone. Failure to pay your monthly bills in a timely manner will result in increased balances and will harm your credit rating. Not all creditors may agree to reduce principal balance, and they may pursue collection, including lawsuits.

### **13-11-13. Contracts, books, and records.**

1. Upon request, each debt-settlement provider shall furnish to the commissioner a copy of the contract entered between the debt-settlement provider and the debtor. The debt-settlement provider shall furnish the debtor with a copy of the written contract at the time of execution which sets forth the charges, if any, agreed upon for the services of the debt-settlement provider.
2. Each debt-settlement provider shall maintain records and accounts that will enable any debtor contracting with the debt-settlement provider, at any reasonable time, to ascertain the status of all the debtor's accounts with the debt-settlement service provider, including the amount of any fees paid by the debtor, amount held in trust, if applicable, settlement offers made and received on each of the debtor's accounts, and legally enforceable settlements reached with the debtor's creditors. Within seven days after a request for that information by the debtor, the debt-settlement provider shall furnish a statement showing the total amount received and the total disbursements to each creditor to any individual. Each debt-settlement provider shall issue a receipt for each payment made by the debtor at a debt-settlement provider office. Each debt-settlement provider shall prepare and retain in the file of each debtor a written analysis of the debtor's income and expenses to substantiate that the plan of payment is feasible and practical.

### **13-11-14. Trust funds - Requirements and restrictions.**

1. All funds received by a debt-settlement provider or the provider's agent from and for the purpose of paying bills, invoices, or accounts of a debtor constitute trust funds owned by and belonging to the debtor from whom the funds were received. All such funds received by the debt-settlement provider must be separated from the funds of the debt-settlement provider not later than the end of the business day following receipt by the debt-settlement provider. All such funds must be kept separate and apart at all times from funds belonging to the

debt-settlement provider or any of its officers, employees, or agents and may be used for no purpose other than paying bills, invoices, or accounts of the debtor. On or before the close of the business day following receipt, all such trust funds received at the main or branch offices of a debt-settlement provider must be deposited in a bank in an account in the name of the debt-settlement provider-designated trust account, or by some other appropriate name indicating that the funds are not the funds of the debt-settlement provider or its officers, employees, or agents.

2. At least once every month, the debt-settlement provider shall render an accounting to the debtor that itemizes the total amount received from the debtor, the total amount paid each creditor, the amount of charges deducted, and any amount held in reserve, if applicable, and the status of each of the debtor's enrolled accounts. In addition, a debt-settlement provider shall provide such an accounting to a debtor within seven days after written demand, but not more than three times per six-month period.
3. This chapter does not require the establishment of a trust account if no consumer funds other than earned settlement fees are held or controlled by a debt-settlement provider.

#### **13-11-15. Requirement of good faith.**

A provider shall act in good faith in all matters under this chapter.

#### **13-11-16. Customer service.**

A provider that is required to be registered under this chapter shall maintain a toll-free communication system, staffed at a level that reasonably permits an individual to speak to a certified counselor or customer service representative, as appropriate, during ordinary business hours.

#### **13-11-17. Required presale consumer disclosures and warnings.**

1. Before the consumer signs a contract, the debt-settlement provider shall provide an oral and written notice to the consumer that clearly and conspicuously discloses all of the following:
  - a. Debt-settlement services may not be suitable for all consumers.
  - b. Using a debt-settlement service likely will harm the consumer's credit history and credit score.
  - c. Using a debt-settlement service does not stop creditor collection activity, including creditor lawsuits and garnishments.
  - d. Not all creditors may accept a reduction in the balance, interest rate, or fees a consumer owes.
  - e. The consumer should inquire about other means of dealing with debt, including nonprofit credit counseling and bankruptcy.
  - f. The consumer remains obligated to make periodic or scheduled payments to creditors while participating in a debt-settlement plan, and that the debt-settlement provider will not make any periodic or scheduled payments to creditors on behalf of the consumer.

- g. The failure to make periodic or scheduled payments to a creditor is likely to:
- (1) Harm the consumer's credit history, credit rating, or credit score;
  - (2) Lead the creditor to increase lawful collection activity, including litigation, garnishment of the consumer's wages, and judgment liens on the consumer's property; and
  - (3) Lead to the imposition by the creditor of interest charges, late fees, and other penalty fees, increasing the principal amount of the debt.
- h. The amount of time estimated to be necessary to achieve the represented results.
- i. The estimated amount of money or the percentage of debt the consumer must accumulate before a settlement offer will be made to each of the consumer's creditors.
- j. A statement indicating that debt-settlement providers are licensed and regulated by the North Dakota department of financial institutions and any complaints regarding the services of a debt-settlement provider should be directed to the North Dakota department of financial institutions, Bismarck, North Dakota.
2. The consumer shall sign and date an acknowledgment form entitled "Consumer Notice and Rights Form" that states: "I, the debtor, have received from the debt-settlement provider a copy of the form entitled "Consumer Notice and Rights Form". The debt-settlement provider or its representative also shall sign and date the acknowledgment form, which includes the name and address of the debt-settlement services provider. The acknowledgment form must be in duplicate and incorporated into the "Consumer Notice and Rights Form". The original acknowledgment form must be retained by the debt-settlement provider, and the duplicate copy must be retained within the form by the consumer. If the acknowledgment form is in electronic form, then the acknowledgment form must contain the consumer disclosures required by section 101(c) of the federal Electronic Signatures in Global and National Commerce Act [15 U.S.C. 7001(c)].
3. The requirements of this section are satisfied if the provider provides the following warning verbatim, both orally and in writing, with the caption "CONSUMER NOTICE AND RIGHTS FORM" in at least twenty-eight-point font and the remaining portion in at least fourteen-point font to a consumer before the consumer signs a contract for the debt-settlement provider's services:

"CONSUMER NOTICE AND RIGHTS FORM

CAUTION

We CANNOT GUARANTEE that you successfully will reduce or eliminate your debt. If you stop paying your creditors, there is a strong likelihood some or all of the following may happen:

- CREDITORS MAY STILL CONTACT YOU AND TRY TO COLLECT.
- CREDITORS MAY STILL SUE YOU FOR THE MONEY YOU OWE.

- YOUR WAGES OR BANK ACCOUNTS STILL MAY BE GARNISHED.
- YOUR CREDIT RATING AND CREDIT SCORE LIKELY WILL BE HARMED.
- NOT ALL CREDITORS MAY AGREE TO ACCEPT A BALANCE REDUCTION.
- YOU SHOULD CONSIDER ALL YOUR OPTIONS FOR ADDRESSING YOUR DEBT, SUCH AS CREDIT COUNSELING AND BANKRUPTCY FILING.
- THE AMOUNT OF MONEY YOU OWE MAY INCREASE DUE TO CREDITOR IMPOSITION OF INTEREST CHARGES, LATE FEES, AND OTHER PENALTY FEES.
- EVEN IF WE DO SETTLE YOUR DEBT, YOU MAY STILL BE REQUIRED TO PAY TAXES ON THE AMOUNT FORGIVEN.

#### YOUR RIGHT TO CANCEL

If you sign a contract with a debt-settlement provider, you have the right to cancel at any time and receive a full refund of all unearned fees you have paid to the provider and all funds placed in your settlement fund that have not been paid to any creditors.

#### IF YOU ARE DISSATISFIED OR YOU HAVE QUESTIONS

If you are dissatisfied with a debt-settlement provider or have any questions, please bring it to the attention of the North Dakota Department of Financial Institutions, Bismarck, North Dakota.

I, the debtor, have received from the debt-settlement provider a copy of the form entitled Consumer Notice and Rights Form.

Signed: \_\_\_\_\_

Printed name: \_\_\_\_\_ "

### **13-11-18. Individualized financial analysis.**

1. Before entering a written contract with a consumer, a debt-settlement provider shall prepare and provide to the consumer in writing and retain a copy of:
  - a. An individualized financial analysis, including the individual's income, expenses, and debts; and
  - b. A statement containing a good-faith estimate of the length of time it will take to complete the debt-settlement program, the total amount of debt owed to each creditor included in the debt-settlement program, the total savings estimated to be necessary to complete the debt-settlement program, and the monthly targeted savings amount estimated to be necessary to complete the debt-settlement program.



2. A debt-settlement provider may not enter a written contract with a consumer unless the debt-settlement provider makes written determinations, supported by the financial analysis, that:
  - a. The consumer can reasonably meet the requirements of the proposed debt-settlement program, including the fees and the periodic savings amounts set forth in the savings goals; and
  - b. The debt-settlement program is suitable for the consumer at the time the contract is to be signed.

### **13-11-19. Debt-settlement contract.**

1. A debt-settlement provider may not provide debt-settlement service to a consumer without a written contract signed and dated by both the consumer and the debt-settlement provider.
2. Any contract for the provision of debt-settlement service entered in violation of this section is voidable.
3. A contract between a debt-settlement provider and a consumer for the provision of debt-settlement service must disclose all of the following clearly and conspicuously:
  - a. The name and address of the consumer.
  - b. The date of execution of the contract.
  - c. The legal name of the debt-settlement provider, including any other business names used by the debt-settlement provider.
  - d. The corporate address and regular business address, including a street address, of the debt-settlement provider.
  - e. The telephone number at which the consumer may speak with a representative of the debt-settlement provider during normal business hours.
  - f. A complete list of the consumer's accounts, debts, and obligations to be included in the provision of debt-settlement service, including the name of each creditor and principal amount of each debt.
  - g. A description of the services to be provided by the debt-settlement provider, including the expected timeframe for settlement for each account, debt, or obligation included in subdivision f.
  - h. An itemized list of all fees to be paid by the consumer to the debt-settlement provider, and the date, approximate date, or circumstances under which each fee will become due.
  - i. A good-faith estimate of the total amount of all fees and compensation, not to exceed the amounts specified in section 13-11-21, to be collected by the debt-settlement provider from the consumer for the provision of debt-settlement service contemplated by the contract.

- j. A statement of the proposed savings goals for the consumer, stating the amount to be saved per month or other period, time period over which savings goals extend, and the total amount of the savings expected to be paid by the consumer pursuant to the terms of the contract.
- k. The amount of money or the percentage of debt the consumer must accumulate before a settlement offer will be made to each of the consumer's creditors.
- l. The written individualized financial analysis required by section 13-11-18.
- m. The contents of the "Consumer Notice and Rights Form" provided in section 13-11-17.
- n. A written notice to the consumer that the consumer may cancel the contract at any time until after the debt-settlement provider has fully performed each service the debt-settlement provider contracted to perform or represented that the debt-settlement provider would perform, and upon that event:
  - (1) The consumer is entitled to a full refund of all unearned fees and compensation paid by the consumer to the debt-settlement provider, and a full refund of all funds provided by the consumer to the debt-settlement provider for a consumer settlement account, except for funds actually paid to a creditor on behalf of the consumer, under the terms of the contract for debt-settlement service; and
  - (2) All powers of attorney granted to the debt-settlement provider by the consumer must be considered revoked and voided.
- o. A form the consumer may use to cancel the contract pursuant to the provisions of section 13-11-20. The form must include the name and mailing address of the debt-settlement provider and shall disclose clearly and conspicuously how the consumer can cancel the contract, including applicable addresses, telephone numbers, facsimile numbers, and electronic mail addresses the consumer can use to cancel the contract.
- 4. If a debt-settlement provider communicates with a consumer primarily in a language other than English, then the debt-settlement provider shall furnish to the consumer a translation of all the disclosures and documents required by this chapter in that other language.

#### **13-11-20. Cancellation of contract and right to fee and settlement fund refunds.**

- 1. A consumer may cancel a contract with a debt-settlement provider at any time before the debt-settlement provider has performed fully each service the debt-settlement provider contracted to perform or represented that the debt-settlement provider would perform.
- 2. If a consumer cancels a contract with a debt-settlement provider, or at any time upon a material violation of this chapter on the part of the debt-settlement provider, the debt-settlement provider shall refund all fees and compensation, with the exception of the application fee and any earned settlement fee, as well as all funds paid by the consumer to the debt-settlement provider that

have accumulated in a consumer settlement account and that the debt-settlement provider has not disbursed to creditors. Upon cancellation, all powers of attorney and direct debit authorizations granted to the debt-settlement provider by the consumer are considered revoked and voided.

3. A debt-settlement provider shall make any refund required under this section within seven days after the notice of cancellation and shall include with the refund a full statement of account showing fees received, fees refunded, savings held, payments to creditors, settlement fees earned, if any, and savings refunded.
4. Upon the cancellation of a contract under this section, the debt-settlement provider shall provide timely notice of the cancellation of the contract to each of the creditors with whom the debt-settlement provider has had any prior communication on behalf of the consumer in connection with the provision of any debt-settlement service.

### **13-11-21. Fees.**

1. A debt-settlement provider may not charge fees of any type or receive compensation from a consumer in a type, amount, or timing other than fees or compensation permitted in this section.
2. A debt-settlement provider may not charge or receive from a consumer any enrollment fee, setup fee, upfront fee of any kind, or any maintenance fee.
3. A debt-settlement provider may charge a settlement fee that may not exceed an amount greater than thirty percent of the savings. If the amount paid by the debt-settlement provider to the creditor or negotiated by the debt-settlement provider and paid by the consumer to the creditor pursuant to a settlement negotiated by the debt-settlement provider on behalf of the consumer as full and complete satisfaction of the creditor's claim with regard to that debt is greater than the principal amount of the debt, the debt-settlement provider is not entitled to any settlement fee.
4. A debt-settlement provider may not collect any settlement fee from a consumer until a creditor enters into a legally enforceable agreement to accept funds in a specific dollar amount as full and complete satisfaction of the creditor's claim with regard to that debt and those funds are provided by the debt-settlement provider on behalf of the consumer or are provided directly by the consumer to the creditor pursuant to a settlement negotiated by the debt-settlement provider.

### **13-11-22. Voluntary contributions.**

A provider may not solicit a voluntary contribution from an individual or an affiliate of the individual for any service provided to the individual.

### **13-11-23. Prohibited acts and practices.**

1. A provider directly or indirectly may not:
  - a. Misappropriate or misapply money held in trust:

- b. Settle a debt on behalf of an individual for more than fifty percent of the principal amount of the debt owed a creditor, unless the individual assents to the settlement after the creditor has assented;
- c. Take a power of attorney that authorizes the provider to settle a debt;
- d. Exercise or attempt to exercise a power of attorney after an individual has terminated a contract;
- e. Initiate a transfer from an individual's account at a bank or with another person unless the transfer is:
  - (1) A return of money to the individual; or
  - (2) Before termination of a contract, properly authorized by the contract and this chapter, and for:
    - (a) Payment to one or more creditors pursuant to a plan; or
    - (b) Payment of a fee;
- f. Offer a gift or bonus, premium, reward, or other compensation to an individual for executing a contract;
- g. Offer, pay, or give a gift or bonus, premium, reward, or other compensation to a person for referring a prospective customer, if the person making the referral has a financial interest in the outcome of debt-management services provided to the customer, unless neither the provider nor the person making the referral communicates to the prospective customer the identity of the source of the referral;
- h. Receive a bonus, commission, or other benefit for referring an individual to a person;
- i. Structure a plan in a manner that would result in a negative amortization of any of an individual's debts, unless a creditor that is owed a negatively amortizing debt agrees to refund or waive the finance charge upon payment of the principal amount of the debt;
- j. Compensate the provider's employees on the basis of a formula that incorporates the number of individuals the employee induces to enter contracts;
- k. Settle a debt or lead an individual to believe that a payment to a creditor is in settlement of a debt to the creditor unless, at the time of settlement, the individual receives a certification by the creditor that the payment is in full settlement of the debt or is part of a payment plan, the terms of which are included in the certification, that upon completion, will lead to full settlement of the debt;
- l. Make a representation that:
  - (1) The provider will furnish money to pay bills or prevent attachments;



- g. Charge the individual for or provide credit or other insurance, coupons for goods or services, membership in a club, access to computers or the internet, or any other matter not directly related to debt-management services or educational services concerning personal finance; or
  - h. Furnish legal advice or perform legal services, unless the person furnishing that advice to or performing those services for the individual is licensed to practice law in this state.
- 3. This chapter does not authorize any person to engage in the practice of law.
- 4. A provider may not receive a gift or bonus, premium, reward, or other compensation, directly or indirectly, for advising, arranging, or assisting an individual in connection with obtaining an extension of credit or other service from a lender or service provider, except for educational or counseling services required in connection with a government-sponsored program.
- 5. Unless a person supplies goods, services, or facilities generally and supplies them to the provider at a cost no greater than the cost the person generally charges to others, a provider may not purchase goods, services, or facilities from the person if an employee or a person that the provider should reasonably know is an affiliate of the provider:
  - a. Owns more than ten percent of the person; or
  - b. Is an employee or affiliate of the person.

#### **13-11-24. Notice of litigation.**

Within thirty days after a provider has been served with notice of a civil action for violation of this chapter by or on behalf of an individual who resides in this state at either the time of a contract or the time the notice is served, the provider shall notify the commissioner in a record that it has been sued.

#### **13-11-25. Liability for the conduct of other persons.**

If a provider delegates any of its duties or obligations under a contract or this chapter to another person, including an independent contractor, the provider is liable for conduct of the person which, if done by the provider, would violate the contract or this chapter.

#### **13-11-26. Powers of the commissioner.**

Insofar as consistent with other provisions of law, the commissioner may:

1. Determine the qualifications of all applicants based on financial responsibility, financial condition, business experience, character, and general fitness which must reasonably warrant the belief that the applicant's business will be conducted lawfully and fairly. In determining whether this qualification is met, and for the purpose of investigating compliance with this chapter, the commissioner may review and consider the relevant business records and capital adequacy of the applicant and the competence, experience, integrity, and financial ability of a person who is a member, partner, director, officer, or twenty-five percent or more shareholder of the applicant.

2. Conduct investigations and make an examination of any person, whether licensed or not, who is engaged in the debt-settlement services business, including all records of such business, and to subpoena witnesses anytime the commissioner has reason to believe such is necessary. The licensee shall pay an examination or visitation fee and must be charged by the commissioner at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the examination or visitation provided for by this section. Fees must be deposited in the financial institutions regulatory fund.
3. Issue and serve upon any person or licensed debt-settlement provider an order to cease and desist to take corrective action when the commissioner has reason to believe the person or agency is violating, has violated, or is about to violate the provisions of this chapter. An interested party may appeal issuance of a cease and desist order under chapter 28-32 by filing written notice of appeal within twenty days after service of the order.
4. Deny, suspend, revoke, condition, or decline to renew a license for a violation of this chapter, rules or regulations issued under this chapter, or an order or directive entered under this chapter.
5. Deny, suspend, revoke, condition, or decline to renew a license if an applicant or licensee withholds information or makes a material misstatement in an application for a license or renewal of a license.

#### **13-11-27. Enforcement authorities, violations, and penalties.**

1. Any person that violates this chapter is guilty of a class C felony.
2. The commissioner may impose a civil money penalty not to exceed five thousand dollars per violation upon a person or agency that willfully violates a law, rule, written agreement, or order under this chapter. An interested party may appeal the assessment of a civil money penalty under chapter 28-32 by filing a written notice of appeal within twenty days after service of the assessment of civil money penalties. A civil money penalty collected under this section must be paid to the state treasurer and deposited in the financial institutions regulatory fund.
3. The attorney general also may enforce this chapter. The attorney general, in enforcing this chapter, has all the powers provided in this chapter or chapter 51-15 and may seek all remedies in this chapter or chapter 51-15. A violation of this chapter is deemed a violation of chapter 51-15. The remedies, duties, prohibitions, and penalties of this chapter are not exclusive and are in addition to all other causes of action, remedies, and penalties under chapter 51-15, or otherwise provided by law.

#### **13-11-28. Void contracts.**

1. If a provider imposes a fee or other charge or receives money or other payments not authorized by sections 13-11-21 and 13-11-22, the contract is void and the individual may recover as provided in section 13-11-20.
2. If a provider is not licensed as required by this chapter when an individual assents to a contract, the contract is void.

3. For a void contract under subsection 2, the provider does not have a claim against the individual for breach of contract or for restitution.

**13-11-29. Private enforcement.**

Any person that is 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 the plaintiff's actual restitution or a sum up to two thousand dollars, whichever is greater. The court may award the plaintiff costs, expenses, and reasonable attorney's fees. This section does not limit any other claims the person may have against the debt-settlement provider or any third party subject to this chapter.

**SECTION 4. REPEAL.** Chapter 13-06 of the North Dakota Century Code is repealed.

Approved April 18, 2011  
Filed April 18, 2011



# DOMESTIC RELATIONS AND PERSONS

## CHAPTER 109

### HOUSE BILL NO. 1297

(Representatives Grande, Kilichowski, Metcalf)  
(Senators Berry, Christmann, Hogue)

AN ACT to create and enact two new sections to chapter 14-02.1 of the North Dakota Century Code, relating to an abortion report form and abortion-inducing drugs; to amend and reenact sections 14-02.1-02, 14-02.1-02.1, and 14-02.1-03, subsections 2 and 3 of section 14-02.1-03.1, and sections 14-02.1-04, 14-02.1-07, 14-02.1-08, 14-02.1-09, 14-02.3-01, 14-02.3-03, 15.1-19-06, and 23-16-14 of the North Dakota Century Code, relating to the regulation of abortion; to provide a penalty; to provide for a report; and to provide a statement of legislative intent.

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

**SECTION 1. AMENDMENT.** Section 14-02.1-02 of the North Dakota Century Code is amended and reenacted as follows:

##### 14-02.1-02. Definitions.

As used in this chapter:

1. "Abortion" means the ~~termination of human pregnancy with an intention other than to produce a live birth or to remove a dead embryo or fetus~~act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable intrauterine pregnancy of a woman, including the elimination of one or more unborn children in a multifetal pregnancy, with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. Such use, prescription, or means is not an abortion if done with the intent to:
  - a. Save the life or preserve the health of the unborn child;
  - b. Remove a dead unborn child caused by spontaneous abortion; or
  - c. Treat a woman for an ectopic pregnancy.
2. "Abortion-inducing drug" means a medicine, drug, or any other substance prescribed or dispensed with the intent of causing an abortion.
3. "Abortion facility" means a clinic, ambulatory surgical center, physician's office, or any other place or facility in which abortions are performed or prescribed, other than a hospital.

4. "Drug label" means the pamphlet accompanying an abortion-inducing drug which outlines the protocol tested and authorized by the federal food and drug administration and agreed upon by the drug company applying for the federal food and drug administration authorization of that drug. Also known as "final printing labeling instructions", drug label is the federal food and drug administration document that delineates how a drug is to be used according to the federal food and drug administration approval.
- ~~3-5.~~ "Hospital" means an institution licensed by the state department of health under chapter 23-16 and any hospital operated by the United States or this state.
- ~~4-6.~~ "Human being" means an individual living member of the species of homo sapiens, including the unborn human being during the entire embryonic and fetal ages from fertilization to full gestation.
- ~~5-7.~~ "Infant born alive" or ~~"live born child"~~ means a born child which exhibits either heartbeat, spontaneous respiratory activity, spontaneous movement of voluntary muscles or pulsation of the umbilical cord if still attached to the child.
- ~~6-8.~~ "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;

~~(2)~~(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

~~(3)~~(4) That she has the right to review the printed materials described in section 14-02.1-02.1. The physician or the physician's agent shall orally inform the woman the materials have been provided by the state of North Dakota and that they describe the unborn child and list agencies that offer alternatives to abortion. If the woman chooses to view the materials, copies of them must be furnished to her. The physician and the physician's agent may disassociate themselves from the materials and may comment or refrain from comment on them, as they choose. 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.

c. The woman certifies in writing, prior to the abortion, that the information described in subdivisions a and b has been furnished to her ~~and that she has been informed of her opportunity to review the information referred to in paragraph 3 of subdivision b.~~

d. ~~Prior to~~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.

7. "Licensed physician" means a person who is licensed to practice medicine or osteopathy under chapter 43-17 or a physician practicing in the armed services of the United States or in the employ of the United States.

~~8-9.~~ "Medical emergency" means ~~that a~~ condition which, on the basis of the physician's best clinical judgment, so complicates a pregnancy as to necessitate an immediate abortion to avert the death of the mother or for which a twenty-four-hour delay will create grave peril of immediate and irreversible loss ~~that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman that it necessitates an immediate abortion to avert her death or for which the twenty-four-hour delay will create serious risk of substantial and irreversible physical impairment of a major bodily function. A condition may not be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct that would result in her death or in substantial and irreversible physical impairment of a major bodily function.~~

9-10. "Physician" means an individual who is licensed to practice medicine or osteopathy under chapter 43-17 or a physician who practices in the armed services of the United States or in the employ of the United States.

11. "Probable gestational age of the unborn child" means what, ~~in the judgment of the attending physician~~reasonable medical judgment, will with reasonable probability be the gestational age of the unborn child at the time the abortion is planned to be performed.

12. "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.
13. "Unborn child" means the offspring of human beings from conception until birth.
- 40-14. "Viable" means the ability of a fetus/an unborn child to live outside the mother's womb, albeit with artificial aid.

**SECTION 2. AMENDMENT.** Section 14-02.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**14-02.1-02.1. Printed information - Referral service.**

1. The state department of health shall publish in English, and in every other language that the department determines is the primary language of a significant number of state residents, the following easily comprehensible printed materials:
  - a. Geographically indexed materials designed to inform the woman of public and private agencies and services available to assist a woman through pregnancy, upon childbirth, and while the child is dependent, including adoption agencies. The materials must include a comprehensive list of the agencies available, a description of the services they offer and a description of the manner, including telephone numbers, in which they might be contacted, or, at the option of the department, printed materials, including a toll-free, twenty-four-hour-a-day telephone number that may be called to obtain, orally, such a list and description of agencies in the locality of the caller and of the services they offer. The materials must state that it is unlawful for any individual to coerce a woman to undergo an abortion and that if a minor is denied financial support by the minor's parent, guardian, or custodian due to the minor's refusal to have an abortion performed, the minor is deemed to be emancipated for the purposes of eligibility for public assistance benefits, except that those benefits may not be used to obtain an abortion. The materials also must state that any physician who performs an abortion upon a woman without her informed consent may be liable to her for damages in a civil action and that the law permits adoptive parents to pay costs of prenatal care, childbirth, and neonatal care. The materials must include the following statement: There are many public and private agencies willing and able to help you to carry your child to term and to assist you and your child after your child is born, whether you choose to keep your child or to place your child for adoption. The state of North Dakota strongly urges you to contact one or more of these agencies before making a final decision about abortion. The law requires that your physician or your physician's agent give you the opportunity to call agencies like these before you undergo an abortion.
  - b. Materials, published in a booklet format, designed to inform the woman of the probable anatomical and physiological characteristics of the ~~fetus~~unborn child at two-week gestational increments from the time when a woman can be known to be pregnant to full term, including any relevant information on the possibility of the survival of the ~~fetus~~unborn child and ~~pictures representing color photographs~~ of the development of a ~~fetus~~unborn child at two-week gestational increments. ~~The majority of the~~

~~pictures included in the booklet must be full color photograph style images and the pictures must contain the dimensions of the fetus and must be realistic and appropriate for the stage of pregnancy depicted. The descriptions must include information about brain and heart function, the presence of external members and internal organs during the applicable states of development, and any relevant information on the possibility of the unborn child's survival. The materials must be objective, nonjudgmental, and designed to convey only accurate scientific information about the fetus/unborn child at the various gestational ages. The materials required under this subsection must be reviewed, updated, and reprinted as needed.~~

- 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 or county public assistance agencies.
- d. Materials that contain objective information describing the various surgical and drug-induced methods of abortion as well as the immediate and long-term medical risks commonly associated with each abortion method, including the risks of infection, hemorrhage, cervical or uterine perforation or rupture, danger to subsequent pregnancies, the possible increased risk of breast cancer, the possible adverse psychological effects associated with an abortion, and the medical risks associated with carrying a child to term.

2. The materials required under subsection 1 must be available at no cost from the state department of health upon request and in appropriate number to any person, facility, or hospital, and, except for copyrighted material, must be available on the department's internet website. The department may make the copyrighted material available on its internet website if the department pays the copyright royalties.

**SECTION 3.** A new section to chapter 14-02.1 of the North Dakota Century Code is created and enacted as follows:

**Abortion report form.**

The state department of health shall prepare an abortion compliance report form and an abortion data report form to be used by the physician for each abortion performed, as required by section 14-02.1-07. The abortion compliance report form must include a checklist designed to confirm compliance with all provisions of this chapter, chapter 14-02.3, chapter 14-02.6, and section 23-16-14. The abortion data report form must include the data called for in the United States standard report of induced termination of pregnancy as recommended by the national center for health statistics.

**SECTION 4. AMENDMENT.** Section 14-02.1-03 of the North Dakota Century Code is amended and reenacted as follows:

### 14-02.1-03. Consent to abortion - Notification requirements.

1. No physician shall perform an abortion unless prior to such performance the physician certified in writing that the woman gave her informed consent as defined and provided in section 14-02.1-02 and shall certify in writing the pregnant woman's marital status and age based upon proof of age offered by her. ~~Prior to~~Before the period of pregnancy when the fetus/unborn child may reasonably be expected to have reached viability, ~~no~~ abortion ~~shall~~may not be performed upon an unemancipated minor unless the attending physician certifies in writing that each of the parents of the minor requesting the abortion has been provided by the physician in person with the information provided for in section 14-02.1-02 at least twenty-four hours ~~prior to~~before the minor's consent to the performance of abortion or unless the attending physician certifies in writing that the physician has caused materials of section 14-02.1-02 to be posted by certified mail to each of the parents of the minor separately to the last-known addresses at least forty-eight hours prior to the minor's consent to the performance of abortion. ~~When~~If a parent of the minor has died or rights and interests of ~~such~~that parent have been legally terminated, this subsection ~~shall apply~~applies to the sole remaining parent. When both parents have died or the rights and interests of both parents have been legally terminated, this subsection ~~shall apply~~applies to the guardian or other person standing in loco parentis. Notification by the attending physician is not required if the minor elects not to allow the notification of one or both parents or her guardian and the abortion is authorized by the juvenile court in accordance with section 14-02.1-03.1. None of the requirements of this subsection apply in the case of a medical emergency, except that when a medical emergency compels the performance of an abortion, the physician shall inform the woman, ~~prior to~~before the abortion if possible, of the medical indications supporting the physician's judgment that an abortion is necessary to avert her death or for which a twenty-four-hour delay will create grave peril of immediate and irreversible loss of major bodily function, and shall certify those indications in writing.
2. Subsequent to the period of pregnancy when the fetus/unborn child may reasonably be expected to have reached viability, no abortion, other than an abortion necessary to preserve her life, or because the continuation of her pregnancy will impose on her a substantial risk of grave impairment of her physical or mental health, may be performed upon any woman in the absence of:
  - a. The written consent of her husband unless her husband is voluntarily separated from her; or
  - b. The written consent of a parent, if living, or the custodian or legal guardian of the woman, if the woman is unmarried and under eighteen years of age.
3. No executive officer, administrative agency, or public employee of the state of North Dakota or any local governmental body has power to issue any order requiring an abortion, nor shall any such officer or entity coerce any woman to have an abortion, nor shall any other person coerce any woman to have an abortion.

**SECTION 5. AMENDMENT.** Subsections 2 and 3 of section 14-02.1-03.1 of the North Dakota Century Code are amended and reenacted as follows:

2. Any pregnant woman under the age of eighteen or next friend is entitled to apply to the juvenile court for authorization to obtain an abortion without parental consent. ~~Proceedings~~All proceedings on such application must be conducted in the juvenile court of the county of the minor's residence before a juvenile judge or referee, if authorized by the juvenile court judge in accordance with the provisions of chapter 27-05, except that the parental notification requirements of chapter 27-20 are not applicable to proceedings under this section. A court may change the venue of proceedings under this section to another county only upon finding that a transfer is required in the best interests of the minor. All applications in accordance with this section must be heard by a juvenile judge or referee within forty-eight hours, excluding Saturdays and Sundays, of receipt of the application. ~~The purpose of the hearing before the juvenile judge or referee must be to determine~~juvenile judge or referee shall find by clear and convincing evidence:
  - a. Whether or not the minor is sufficiently mature and well informed with regard to the nature, effects, and possible consequences of both having an abortion and bearing her child to be able to choose intelligently among the alternatives.
  - b. If the minor is not sufficiently mature and well informed to choose intelligently among the alternatives without the advice and counsel of her parents or guardian, whether or not it would be in the best interests of the minor to notify her parents or guardian of the proceedings and call in the parents or guardian to advise and counsel the minor and aid the court in making its determination and to assist the minor in making her decision.
  - c. If the minor is not sufficiently mature and well informed to choose intelligently among the alternatives and it is found not to be in the best interests of the minor to notify and call in her parents or guardian for advice and counsel, whether an abortion or some other alternative would be in the best interests of the minor.
3. All proceedings in connection with this section must be kept confidential and the identity of the minor must be protected in accordance with provisions relating to all juvenile court proceedings. This section does not limit the release, upon request, of statistical information regarding applications made under this section and their disposition.

**SECTION 6.** A new section to chapter 14-02.1 of the North Dakota Century Code is created and enacted as follows:

**Abortion-inducing drugs.**

1. For purposes of this chapter, an abortion accomplished by the use of an abortion-inducing drug is deemed to occur when the drug is prescribed, in the case of a prescription, or when the drug is administered directly to the woman by the physician.
2. It is unlawful to knowingly give, sell, dispense, administer, otherwise provide, or prescribe any abortion-inducing drug to a pregnant woman for the purpose of inducing an abortion in that pregnant woman, or enabling another person to induce an abortion in a pregnant woman, unless the person who gives, sells, dispenses, administers, or otherwise provides or prescribes the abortion-inducing drug is a physician, and the provision or prescription of the abortion-inducing drug satisfies the protocol tested and authorized by the

federal food and drug administration and as outlined in the label for the abortion-inducing drug.

3. Every pregnant woman to whom a physician gives, sells, dispenses, administers, otherwise provides, or prescribes any abortion-inducing drug must be provided with a copy of the drug's label.
4. Any physician who gives, sells, dispenses, administers, prescribes, or otherwise provides an abortion-inducing drug shall enter a signed contract with another physician who agrees to handle emergencies associated with the use or ingestion of the abortion-inducing drug. The physician shall produce the signed contract on demand by the patient, the department of health, or a criminal justice agency. Every pregnant woman to whom a physician gives, sells, dispenses, administers, prescribes, or otherwise provides any abortion-inducing drug must be provided the name and telephone number of the physician who will be handling emergencies and the hospital at which any emergencies will be handled. The physician who contracts to handle emergencies must have active admitting privileges and gynecological and surgical privileges at the hospital designated to handle any emergencies associated with the use or ingestion of the abortion-inducing drug.
5. When an abortion-inducing drug or chemical is used for the purpose of inducing an abortion, the drug or chemical must be administered by or in the same room and in the physical presence of the physician who prescribed, dispensed, or otherwise provided the drug or chemical to the patient.

**SECTION 7. AMENDMENT.** Section 14-02.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**14-02.1-04. Limitations on the performance of abortions - Penalty.**

1. No abortion may be done by any person other than a ~~licensed~~ physician using applicable medical standards ~~applicable to all other surgical procedures.~~
2. After the first twelve weeks of pregnancy but prior to the time at which the ~~fetus~~unborn child may reasonably be expected to have reached viability, no abortion may be performed in any facility other than a licensed hospital.
3. After the point in pregnancy when the ~~fetus~~unborn child may reasonably be expected to have reached viability, no abortion may be performed except in a hospital, and then only if in the medical judgment of the physician the abortion is necessary to preserve the life of the woman or if in the physician's medical judgment the continuation of her pregnancy will impose on her a substantial risk of grave impairment of her physical or mental health.

An abortion under this subsection may only be performed if the above-mentioned medical judgment of the physician who is to perform the abortion is first certified by the physician in writing, setting forth in detail the facts upon which the physician relies in making this judgment and if this judgment has been concurred in by two other licensed physicians who have examined the patient. The foregoing certification and concurrence is not required in the case of an emergency when the abortion is necessary to preserve the life of the patient.

4. An abortion facility may not perform an abortion on a woman without first offering the woman an opportunity to receive and view at the abortion facility



or another facility an active ultrasound of her ~~fetus~~unborn child. The offer and opportunity to receive and view an ultrasound must occur at least twenty-four hours before the abortion is scheduled to be performed. The active ultrasound image must be of a quality consistent with standard medical practice in the community, contain the dimensions of the ~~fetus~~unborn child, and accurately portray the presence of external members and internal organs, including the heartbeat, if present or viewable, of the ~~fetus~~unborn child. The auscultation of the fetal heart tone must be of a quality consistent with standard medical practice in the community. The abortion facility shall document the woman's response to the offer, including the date and time of the offer and the woman's signature attesting to her informed decision.

5. Any ~~licensed~~ physician who performs an abortion without complying with the provisions of this section is guilty of a class A misdemeanor.
6. It is a class B felony for any person, other than a physician licensed under chapter 43-17, to perform an abortion in this state.

**SECTION 8. AMENDMENT.** Section 14-02.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**14-02.1-07. Records required - Reporting of practice of abortion.**

1. Records:
  - a. All abortion facilities and hospitals in which abortions are performed shall keep records, including admission and discharge notes, histories, results of tests and examinations, nurses' worksheets, social service records, and progress notes, and shall further keep a copy of all written certifications provided for in this chapter as well as a copy of the constructive notice forms, consent forms, court orders, abortion data reports, adverse event reports, abortion compliance reports, and complication reports. All abortion facilities shall keep records of the number of women who availed themselves of the opportunity to receive and view an ultrasound image of their ~~fetuses~~unborn children pursuant to section 14-02.1-04, and the number who did not; and of each of those numbers, the number who, to the best of the reporting abortion facility's information and belief, went on to obtain the abortion. Records must be maintained in the permanent files of the hospital or abortion facility for a period of not less than seven years.
  - b. The medical records of abortion facilities and hospitals in which abortions are performed and all information contained therein must remain confidential and may be used by the state department of health only for gathering statistical data and ensuring compliance with the provisions of this chapter.
2. Reporting:
  - a. An individual abortion compliance report and an individual abortion data report for each abortion performed upon a woman must be completed by her attending physician. The abortion data report must be confidential and may not contain the name of the woman. ~~This reporting~~The abortion data report must include the data called for in the United States standard report of induced termination of pregnancy as recommended by the national center for health statistics.

- b. All abortion compliance reports must be signed by the attending physician within twenty-four hours and submitted to the state department of health within ~~thirty~~ten business days from the date of the abortion. All abortion data and complication reports must be signed by the attending physician ~~providing the post-abortion care~~ and submitted to the state department of health within thirty days from the date of the ~~post-abortion care~~abortion. If a physician provides an abortion-inducing drug to another for the purpose of inducing an abortion and the physician knows that the individual experiences during or after the use an adverse event, the physician shall provide a written report of the adverse event within thirty days of the event to the state department of health and the federal food and drug administration via the medwatch reporting system. For purposes of this section, "adverse event" is defined based upon the federal food and drug administration criteria given in the medwatch reporting system.
- c. A copy of the abortion report, any complication report, and any adverse event report must be made a part of the medical record of the patient at the facility or hospital in which the abortion was performed. In cases when post-abortion complications are discovered, diagnosed, or treated by physicians not associated with the facility or hospital where the abortion was performed, the state department of health shall forward a copy of the report to that facility or hospital to be made a part of the patient's permanent record.
- d. The state department of health is responsible for collecting all abortion compliance reports and, abortion data reports, complication reports, and adverse event reports and collating and evaluating all data gathered ~~therefrom~~from these reports and shall annually publish a statistical report based on data from abortions performed in the previous calendar year. All abortion compliance reports received by the state department of health are public records. Except for disclosure to a law enforcement officer or state agency, the department may not disclose an abortion compliance report without first removing any individually identifiable health information and any other demographic information, including race, marital status, number of previous live births, and education regarding the woman upon whom the abortion was performed.
- e. The state department of health shall report to the attorney general any apparent violation of this chapter.

**SECTION 9. AMENDMENT.** Section 14-02.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**14-02.1-08. Protection of ~~viable fetus~~infant born alive - Penalty.**

1. A person is guilty of a class C felony if the person knowingly, or negligently, causes the death of a ~~viable fetus~~an infant born alive.
2. Whenever a ~~fetus which~~an unborn child who is the subject of abortion is born alive and is viable, it becomes an abandoned and deprived child, unless:
  - a. The termination of the pregnancy is necessary to preserve the life of the mother; or
  - b. The mother and her spouse, or either of them, have agreed in writing in advance of the abortion, or within seventy-two hours thereafter, to accept

the parental rights and responsibilities for the fetusunborn child if it survives the abortion procedure.

**SECTION 10. AMENDMENT.** Section 14-02.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**14-02.1-09. Humane disposal of nonviable fetusunborn child.**

The ~~licensed~~ physician performing the abortion, if performed outside of a hospital, must see to it that the fetusunborn child is disposed of in a humane fashion under regulations established by the state department of health. A licensed hospital in which an abortion is performed must dispose of a dead fetusunborn child in a humane fashion in compliance with regulations promulgated by the state department of health.

**SECTION 11. AMENDMENT.** Section 14-02.3-01 of the North Dakota Century Code is amended and reenacted as follows:

**14-02.3-01. State policy on abortion and childbirth - Use of public funds restricted.**

1. Between normal childbirth and abortion, it is the policy of the state of North Dakota that normal childbirth is to be given preference, encouragement, and support by law and by state action, it being in the best interests of the well-being and common good of North Dakota citizens.
2. An agency of this state may not produce, distribute, publish, disseminate, endorse, or approve materials of any type that, between normal childbirth and abortion, do not give preference, encouragement, and support to normal childbirth. An agency of the state may not fund, endorse, or support any program that, between normal childbirth and abortion, does not give preference, encouragement, and support to normal childbirth.
3. No funds of this state or any agency, county, municipality, or any other subdivision thereof and no federal funds passing through the state treasury or a state agency may be used to pay for the performance, or for promoting the performance, of an abortion unless the abortion is necessary to prevent the death of the woman.

**SECTION 12. AMENDMENT.** Section 14-02.3-03 of the North Dakota Century Code is amended and reenacted as follows:

**14-02.3-03. Payment for abortions by health insurance policies delivered or issued in North Dakota restricted.**

No health insurance contracts, plans, or policies delivered or issued for delivery in this state may provide coverage for abortions, including the elimination of one or more unborn children in a multifetal pregnancy, except by an optional rider for which there must be paid an additional premium. Provided, however, that this section does not apply to the performance of an abortion necessary to prevent the death of the woman.

**SECTION 13. AMENDMENT.** Section 15.1-19-06 of the North Dakota Century Code is amended and reenacted as follows:

### 15.1-19-06. Abortion referrals.

1. No person while acting in an official capacity as an employee or agent of a school district may refer a student to another person, agency, or entity for the purpose of obtaining an abortion. This provision does not extend to private communications between the employee or agent and a child of the employee or agent.
2. Between normal childbirth and abortion, it is the policy of the state of North Dakota that normal childbirth is to be given preference, encouragement, and support by law and by state action. A person acting in an official capacity as an employee or agent of a school district, between normal childbirth and abortion, shall give preference, encouragement, and support to normal childbirth. No public school in the state may endorse or support any program that, between normal childbirth and abortion, does not give preference, encouragement, and support to normal childbirth. No public school of the state may authorize a presentation to students that, between normal childbirth and abortion, does not give preference, encouragement, and support to normal childbirth.

**SECTION 14. AMENDMENT.** Section 23-16-14 of the North Dakota Century Code is amended and reenacted as follows:

#### **23-16-14. Participation in abortion - Not mandatory.**

No hospital, physician, nurse, hospital employee, nor any other person is under any duty, by law or contract, nor may such hospital or person in any circumstances be required to participate in the performance of an abortion, if such hospital or person objects to such abortion. No such person or institution may be discriminated against because the person or institution so objects. For purposes of this section, "abortion" means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable intrauterine pregnancy of a woman, including the elimination of one or more unborn children in a multifetal pregnancy, with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. Such use, prescription, or means is not an abortion if done with the intent to save the life or preserve the health of the unborn child; remove a dead unborn child caused by spontaneous abortion; or treat a woman for an ectopic pregnancy.

**SECTION 15. STATE DEPARTMENT OF HEALTH REPORT TO LEGISLATIVE MANAGEMENT - ABORTION DATA.** During the 2011-12 interim, the state department of health shall:

1. Create an inventory of the data, reports, records, and other material the department is required to gather, receive, create, or maintain relating to abortions as required under chapter 14-02.1. The inventory must include information regarding the frequency with which the items in the inventory must be gathered, received, or created.
2. Create a report that outlines the department's practices in gathering, receiving, and creating the items in the inventory.
3. Make three reports to the legislative management on the status and outcome of the creation of the inventory and the practices report. The first report must be made before January 1, 2012; the second before April 1, 2012; and the third before September 1, 2012.

**SECTION 16. STATEMENT OF LEGISLATIVE INTENT.** The costs incurred by the state department of health as a result of producing the printed information required under section 2 of this Act may not exceed fifty thousand dollars.

Approved April 18, 2011  
Filed April 18, 2011

## CHAPTER 110

### HOUSE BILL NO. 1265

(Representatives S. Kelsh, Grande, Klein, Klemin, Kretschmar)  
(Senator Lyson)

AN ACT to amend and reenact section 14-05-24 of the North Dakota Century Code, relating to divorce and the consideration of pension plans in the division of property and debts.

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

**SECTION 1. AMENDMENT.** Section 14-05-24 of the North Dakota Century Code is amended and reenacted as follows:

##### **14-05-24. Division of property and debts.**

1. When a divorce is granted, the court shall make an equitable distribution of the property and debts of the parties.
2. If one party to the divorce is covered by the civil service retirement system or other government pension system in lieu of social security and is not entitled to receive full social security benefits and the other party is a social security recipient, in making an equitable distribution award, the court shall compute what the present value of the social security benefits would have been to the party with the government pension during the covered period and subtract that amount from the value of the government pension in order to determine the government pension's marital portion.
3. The court may redistribute property and debts in a postjudgment proceeding if a party has failed to disclose property and debts as required by rules adopted by the supreme court or the party fails to comply with the terms of a court order distributing property and debts.

Approved April 20, 2011  
Filed April 20, 2011

## CHAPTER 111

### SENATE BILL NO. 2288

(Senator Holmberg)

AN ACT to create and enact a new section to chapter 14-05 of the of the North Dakota Century Code, relating to summary real estate disposition judgments.

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

**SECTION 1.** A new section to chapter 14-05 of the North Dakota Century Code is created and enacted as follows:

##### **Summary real estate disposition judgment.**

1. If real estate is described in a judgment and decree of divorce, the court may direct either of the parties or their legal counsel to prepare and submit to the court, in a form prescribed by the court, a proposed summary real estate disposition judgment. Upon approval by the court and filing of the summary real estate disposition judgment with the clerk of court, the clerk of court shall provide to any party upon request certified copies of the summary real estate disposition judgment.
2. A summary real estate disposition judgment must contain the following information:
  - a. The full caption and file number of the case and the title "Summary Real Estate Disposition Judgment";
  - b. The dates of the parties' marriage and of the entry of the judgment and decree of divorce;
  - c. The names of the parties' attorneys or if either or both appeared pro se;
  - d. The name of the judge and referee, if any, who signed the order for judgment and decree;
  - e. Whether the judgment and decree resulted from a stipulation, a default, or a trial and the appearances at the default or trial;
  - f. If the judgment and decree resulted from a stipulation, whether the real property was described by a legal description;
  - g. If the judgment and decree resulted from a default, whether the petition contained the legal description of the property and whether disposition was made in accordance with the request for relief;
  - h. Whether the summons and petition were served personally upon the respondent in accordance with the North Dakota Rules of Civil Procedure;

- i. If the summons and petition were served on the respondent only by publication, the name of each legal newspaper and county in which the summons and petition were published and the dates of publications;
  - j. Whether either party changed the party's name through the judgment and decree;
  - k. The legal description of each parcel of real estate;
  - l. The name or names of the persons awarded an interest in each parcel of real estate and a description of the interest awarded;
  - m. Liens, mortgages, encumbrances, or other interests in the real estate described in the judgment and decree; and
  - n. Triggering or contingent events set forth in the judgment and decree affecting the disposition of each parcel of real estate.
3. a. On the court's own motion or on application by an interested person, the court shall issue an order authorizing the clerk of court to issue an amended summary real estate disposition judgment to correct an erroneous legal description of real estate contained in the judgment and decree of divorce.
  - b. An application to correct a legal description under this subdivision must contain:
    - (1) The erroneous legal description contained in the judgment and decree;
    - (2) The correct legal description of the real estate;
    - (3) Written evidence satisfactory to the court to show the correct legal description, or a request for an evidentiary hearing to produce evidence of the correct legal description; and
    - (4) A proposed amended summary real estate disposition judgment.
  - c. The court shall consider an application under this subsection on an expedited basis. The court's order must be based on the evidence provided in the application, the evidence produced at an evidentiary hearing, or the evidence already in the record of the proceeding. If the court is satisfied that an erroneous legal description should be corrected under this subsection, the court may issue its order without a hearing or notice to any person. A filing fee is not required for an application under this subsection. The court's order must be treated as an amendment of the court's findings of fact regarding the legal description of the property in question, without the need to amend the original judgment and decree. The court shall issue the order if the court specifically finds that the court had jurisdiction over the respondent in the divorce proceeding and that the property was sufficiently identified in the original proceedings to prevent prejudice to the rights of either party to the divorce and that the amendment will not prejudice their rights. The court's order is effective retroactive to the date of entry of the original judgment and decree of divorce.



- d. An amended summary real estate disposition judgment must be treated the same as the prior summary real estate disposition judgment for all purposes.
  - e. On request by any interested person, the clerk of court shall provide a certified copy of an amended summary real estate disposition judgment showing the correct legal description of the real property affected by the judgment and decree.
  - f. This subsection may not be used to add omitted property to a judgment and decree of divorce, unless the court determines that the omitted property is an integral or appurtenant part of real property already properly included in the judgment and decree.
4. An order or provision in a judgment and decree that provides that the judgment and decree must be recorded in the office of the county recorder means, if a summary real estate disposition judgment has been approved by the court, that the summary real estate disposition judgment, rather than the judgment and decree, must be recorded in the office of the county recorder.
  5. The summary real estate disposition judgment operates as a conveyance and transfer of each interest in the real estate in the manner and to the extent described in the summary real estate disposition judgment. A summary real estate disposition judgment, or an amended summary real estate disposition judgment that supersedes an earlier judgment, is prima facie evidence of the facts stated in the summary real estate disposition judgment. A purchaser for value without notice of any defect in the divorce proceedings may rely on a summary real estate disposition judgment or a later amended summary real estate disposition judgment to establish the facts stated in the judgment.
  6. If a conflict exists between the judgment and decree and the summary real estate disposition judgment, the summary real estate disposition judgment recorded in the office of the county recorder controls as to the interest acquired in real estate by any subsequent purchaser in good faith and for a valuable consideration, who is in possession of the interest or whose interest is recorded with the county recorder, before the recording of the judgment and decree in office of county recorder.

Approved April 20, 2011  
Filed April 20, 2011

## CHAPTER 112

### SENATE BILL NO. 2247

(Senators Olafson, Lyson, Nelson)  
(Representatives DeKrey, Delmore, Sanford)

AN ACT to create and enact a new section to chapter 14-07.1 of the North Dakota Century Code, relating to a domestic violence fatality review commission.

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

**SECTION 1.** A new section to chapter 14-07.1 of the North Dakota Century Code is created and enacted as follows:

##### **Domestic violence fatality review commission.**

1. The attorney general's office may establish a domestic violence fatality review commission to review domestic violence deaths that have occurred in the state. The domestic violence fatality review commission may review incidents in which the investigation of fatal incidents of domestic violence has been completed or adjudicated by law enforcement for the purpose of:
  - a. Recommending policies and protocols to prevent the incidence of domestic violence and resulting fatalities; and
  - b. Providing consultation and coordination for agencies involved in the prevention and investigation of domestic violence.
2. The attorney general shall appoint the membership of the domestic violence fatality review commission, as appropriate, and may include representatives from:
  - a. Law enforcement agencies within the state;
  - b. County or city attorneys and public defenders, and the judiciary;
  - c. The medical examiner;
  - d. The department of corrections and rehabilitation;
  - e. Physicians and mental health professionals;
  - f. Employees of the state department of health and county social services;
  - g. Local civic agencies and organizations involved with crime victims and domestic violence protection, reporting, counseling, and assistance;
  - h. Other organizations, departments, and agencies determined to be appropriate; and
  - i. Other individuals serving on an ad hoc basis in association with a particular review.

3. The commission may investigate and review the facts and circumstances of all deaths that occur in the state as a result of domestic violence.
  - a. The review may include necessary and appropriate information, including current laws and policies, actions taken by agencies and persons related to or involved with the incident, criminal justice data collection and analysis, and other information the commission determines to be relevant to the review.
  - b. The confidential and other appropriate records of a department or agency of the state or municipality relating to the domestic violence incident may be examined by the commission. The domestic violence fatality review commission and each member of the commission shall preserve the confidentiality of any records examined.
4. The domestic violence fatality review commission shall report its findings and recommendations to the attorney general before December thirty-first of each year.
5. Meetings of the domestic violence fatality review commission are closed to the public and are not subject to section 44-04-19.
6. The determinations, conclusions, and recommendations of the domestic violence fatality review commission are not admissible in a civil or criminal proceeding.
7. Except for a public report issued by the attorney general's office, any information, records, or data collected by the commission are an exempt record. The commission may not use the information, records, or data for purposes other than those designated by this section.
8. Whenever funding is available from grants, a member of the domestic violence fatality review commission who is not a permanent full-time state employee is entitled to compensation at a rate of seventy-five dollars per day and mileage and expense reimbursement as provided for in sections 44-08-04 and 54-06-09. A state employee who is a member of the commission must receive that employee's regular salary and is entitled to mileage and expense reimbursement as provided for in sections 44-08-04 and 54-06-09, to be paid by the employing agency.

Approved April 27, 2011  
Filed April 27, 2011

## CHAPTER 113

### SENATE BILL NO. 2214

(Senators Schneider, Lyson, Olafson)  
(Representatives Beadle, Klemin)

AN ACT to amend and reenact section 14-09-22 of the North Dakota Century Code, relating to the abuse or neglect of a child; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 14-09-22 of the North Dakota Century Code is amended and reenacted as follows:

##### **14-09-22. Abuse or neglect of child - Penalty.**

1. Except as provided in subsection 2 or 3, a parent, adult family or household member, guardian, or other custodian of any child, who willfully commits any of the following offenses is guilty of a class C felony except if the victim of an offense under subdivision a is under the age of six years in which case the offense is a class B felony:
  - a. Inflicts, or allows to be inflicted, upon the child, bodily injury, substantial bodily injury, or serious bodily injury as defined by section 12.1-01-04 or mental injury.
  - b. Fails to provide proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals.
  - c. Permits the child to be, or fails to exercise reasonable diligence in preventing the child from being, in a disreputable place or associating with vagrants or vicious or immoral persons.
  - d. Permits the child to engage in, or fails to exercise reasonable diligence in preventing the child from engaging in, an occupation forbidden by the laws of this state or an occupation injurious to the child's health or morals or the health or morals of others.
2. A person who provides care, supervision, education, or guidance for a child unaccompanied by the child's parent, adult family or household member, guardian, or custodian in exchange for money, goods, or other services and who while providing such services commits an offense under subdivision a of subsection 1 is guilty of a class B felony. Any such person who commits, allows to be committed, or conspires to commit, against the child, a sex offense as defined in chapter 12.1-20 is subject to the penalties provided in that chapter.
3. A person who commits an offense under subdivision a of subsection 1 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.

Approved April 19, 2011  
Filed April 20, 2011

## CHAPTER 114

### SENATE BILL NO. 2181

(Senators Olafson, Lyson, Schneider)  
(Representatives Damschen, Klemin, Monson)

AN ACT to amend and reenact section 14-10-06 of the North Dakota Century Code, relating to mitigating factors for contributing to the consumption or possession of alcoholic beverages by a minor.

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

**SECTION 1. AMENDMENT.** Section 14-10-06 of the North Dakota Century Code is amended and reenacted as follows:

#### **14-10-06. Unlawful to encourage or contribute to the deprivation or delinquency of minor - Penalty.**

1. Any individual who by any act willfully encourages, causes, or contributes to the delinquency or deprivation of any minor is guilty of a class A misdemeanor.
2. Any individual who by any act willfully encourages, causes, or contributes to the deprivation of a child less than sixteen years of age by causing that child to engage in sexual conduct as defined under section 12.1-27.2-01, in any play, motion picture, photograph, dance, or other visual representation is guilty of a class C felony.
3. If an individual is convicted of this section for encouraging, causing, or contributing to the consumption or possession of alcoholic beverages by ~~an individual under twenty-one years of age~~ a minor, the court shall consider the following in mitigation:
  - a. After consuming the alcohol, the underage individual was in need of medical assistance as a result of consuming alcohol; and
  - b. Within twelve hours after the underage individual consumed the alcohol, the defendant contacted law enforcement or emergency medical personnel to report that the underage individual was in need of medical assistance as a result of consuming alcohol.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 115

### SENATE BILL NO. 2082

(Judiciary Committee)

(At the request of the Department of Human Services)

AN ACT to create and enact a new section to chapter 14-15.1 of the North Dakota Century Code, relating to the confidentiality of identified adoption proceedings.

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

**SECTION 1.** A new section to chapter 14-15.1 of the North Dakota Century Code is created and enacted as follows:

#### **Confidentiality of records.**

All files, records, and proceedings under this chapter are confidential pursuant to section 14-15-16. This confidentiality requirement is retroactive pursuant to subsection 25 of section 14-15-16.

Approved April 25, 2011

Filed April 25, 2011

# EDUCATION

## CHAPTER 116

### HOUSE BILL NO. 1213

(Representatives Williams, Wall)  
(Senator Holmberg)

AN ACT to amend and reenact section 15-10-02 of the North Dakota Century Code, relating to state board of higher education advisers.

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

**SECTION 1. AMENDMENT.** Section 15-10-02 of the North Dakota Century Code is amended and reenacted as follows:

**15-10-02. Membership of state board of higher education - ~~Faculty adviser~~Advisers.**

1. The state board of higher education consists of eight members, all of whom must be appointed by the governor in accordance with section 6 of article VIII of the Constitution of North Dakota.
2. The council of college faculties shall annually appoint one individual to serve as an adviser to the state board. The adviser may attend and participate in all meetings of the state board but may not vote.
3. The staff senate annually shall appoint one individual to serve as an adviser to the state board. The adviser may attend and participate in all meetings of the state board but may not vote.

Approved April 4, 2011  
Filed April 4, 2011

## CHAPTER 117

### HOUSE BILL NO. 1035

(Legislative Management)  
(Higher Education Committee)

AN ACT to amend and reenact section 15-10-12 of the North Dakota Century Code, relating to the appropriation of higher education institutions' special revenue funds.

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

**SECTION 1. AMENDMENT.** Section 15-10-12 of the North Dakota Century Code is amended and reenacted as follows:

**15-10-12. (Effective through June 30, ~~2011~~2013) Board may accept gifts and bequests - Deposit and appropriation of institutional funds.**

Subject to the limitations of section 15-10-12.1, the state board of higher education may receive donations, gifts, grants, and bequests offered or tendered to or for the benefit of any institution of higher education under its control or subject to its administration, and all moneys coming into the hands of the board as donations, gifts, grants, and bequests must be used for the specific purpose for which they are donated or given. A special revenue fund, for each institution of higher education under the control of the board or subject to its administration, must be maintained within the state treasury. All rent, interest, or income from land, money, or property, donated or granted by the United States and allocated to specific institutions of higher learning under the terms of the Enabling Act and the Constitution of North Dakota must be deposited in the special revenue fund of each institution and expended in accordance with section 1 of article IX of the Constitution of North Dakota. All other funds, unless restricted by the terms of a grant, donation, or bequest, received by the institutions from federal, state, and local grants and contracts, indirect cost recoveries, tuition, special student fees, room and board fees and other auxiliary enterprise fees, student activity fees, continuing education program fees, internal service fund revenues, and all other revenues must be deposited in the institution special revenue funds. The state treasurer shall immediately transfer the funds deposited in the special revenue funds to institution accounts in the Bank of North Dakota. Biennial estimates of revenue and expenditures of the other funds by source of funds must be presented at the same time biennial budget requests for appropriations from the special revenue fund and state general fund are prepared and submitted to the office of the budget. Payments from each institution's general fund appropriation must be made in amounts as may be necessary for the operation and maintenance of each institution. The funds in the institution accounts are appropriated on a continuing basis to the state board of higher education. All such appropriations are subject to proration in the same manner as other appropriations are prorated if insufficient funds are available to meet expenditures from the general fund. Sinking funds for the payment of interest and principal of institutional revenue bonds must be deposited pursuant to section 15-55-06.

**(Effective after June 30, ~~2011~~2013) Board may accept gifts and bequests - Deposit of funds.** The state board of higher education may, subject to the limitations of section 15-10-12.1, receive donations, gifts, grants, and bequests offered or



tendered to or for the benefit of any institution of higher education under its control or subject to its administration, and all moneys coming into the hands of the board as donations, gifts, grants, and bequests must be used for the specific purpose for which they are donated or given. A special revenue fund, for each institution of higher education under the control of the board or subject to its administration, must be maintained within the state treasury and all institutional income from tuition collections must be placed in the special fund for the use of the institution for which the money was raised. All rent, interest, or income from land, money, or property, donated or granted by the United States and allocated to specific institutions of higher learning under the terms of the Enabling Act and the Constitution of North Dakota must be deposited in the special revenue fund of each institution and expended in accordance with section 1 of article IX of the Constitution of North Dakota. Moneys in the special revenue fund are subject to legislative appropriations. All other funds, unless restricted by the terms of a grant, donation, or bequest, received by the institutions from federal, state, and local grants and contracts, indirect cost recoveries, special student fees, room and board fees and other auxiliary enterprise fees, student activity fees, continuing education program fees, internal service fund revenues, and all other revenues must be deposited in the institution special revenue funds. The state treasurer shall immediately transfer the funds deposited in the special revenue funds to institution accounts in the Bank of North Dakota. Biennial estimates of revenue and expenditures of the other funds by source of funds must be presented at the same time biennial budget requests for appropriations from the special revenue fund and state general fund are prepared and submitted to the office of the budget. Payments from each institution's general fund appropriation must be made in amounts as may be necessary for the operation and maintenance of each institution, except that at the close of the biennium the balance of funds not paid from the general fund appropriation must be deposited in the special revenue funds of the institutions. All such appropriations are subject to proration in the same manner as other appropriations are prorated if insufficient funds are available to meet expenditures from the general fund. Sinking funds for the payment of interest and principal of institutional revenue bonds must be deposited pursuant to section 15-55-06.

Approved April 19, 2011

Filed April 20, 2011

## CHAPTER 118

### HOUSE BILL NO. 1263

(Representatives Carlson, Dosch, R. Kelsch, Skarphol)

AN ACT to create and enact a new section to chapter 15-10 of the North Dakota Century Code, relating to the athletic nickname and logo of the university of North Dakota.

#### 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:

#### **University of North Dakota fighting Sioux nickname and logo.**

The intercollegiate athletic teams sponsored by the university of North Dakota shall be known as the university of North Dakota fighting Sioux. Neither the university of North Dakota nor the state board of higher education may take any action to discontinue the use of the fighting Sioux nickname or the fighting Sioux logo in use on January 1, 2011. Any actions taken by the state board of higher education and the university of North Dakota before the effective date of this Act to discontinue the use of the fighting Sioux nickname and logo are preempted by this Act. If the national collegiate athletic association takes any action to penalize the university of North Dakota for using the fighting Sioux nickname or logo, the attorney general shall consider filing a federal antitrust claim against that association.

Approved March 15, 2011

Filed March 15, 2011

## CHAPTER 119

### SENATE BILL NO. 2323

(Senators Christmann, Hogue, Heckaman)  
(Representatives R. Kelsch, Headland, Monson)

AN ACT to create and enact a new section to chapter 15-10 of the North Dakota Century Code, relating to variance reports for certain construction projects at institutions of higher education.

#### 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:

#### **Construction projects at institutions of higher education - Variance reports.**

1. Whenever any new construction, renovation, or repair, valued at more than two hundred fifty thousand dollars is underway on the campus of an institution of higher education under the control of the state board of higher education, the board shall provide monthly project variance reports to the director of the office of management and budget. Each report must include:
  - a. The name or a description of the project;
  - b. The expenditure authorized by the legislative assembly;
  - c. The amount of the original contract;
  - d. The amount of any change orders;
  - e. The amount of any potential or anticipated change orders;
  - f. The sum of subdivisions c through e and the amount by which that sum varies from the expenditure authorized by the legislative assembly;
  - g. The total expended for the project to date; and
  - h. The scheduled date of completion as noted in the original contract and the latest available scheduled date of completion.
2. The state board of higher education also shall provide to the director of the office of management and budget, at the same time as the project variance report required by subsection 1:
  - a. A brief description of each change order included in subdivision d of subsection 1; and
  - b. A list of each public and nonpublic entity that has a contractually reflected financial obligation with respect to the project.

3. The office of management and budget shall review the information received under this section and provide reports to the budget section of the legislative management upon request.

Approved April 26, 2011  
Filed April 26, 2011

## CHAPTER 120

### SENATE BILL NO. 2351

(Senators Schneider, Flakoll)  
(Representatives Dahl, Heilman, R. Kelsch, Mock)

AN ACT to create and enact chapter 15-10.3 of the North Dakota Century Code, relating to student fees at institutions of higher education under the control of the state board of higher education; to provide for a legislative management study; and to provide an expiration date.

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

**SECTION 1.** Chapter 15-10.3 of the North Dakota Century Code is created and enacted as follows:

##### **15-10.3-01. Definitions.**

For purposes of this chapter, unless the context otherwise requires:

1. "Fee" means any monetary charge, other than tuition, that a student is assessed for a specific purpose or supplemental service.
2. "Tuition" means the monetary charge that a student is assessed in order to be enrolled in a class or program for which a student generally earns academic credit.

##### **15-10.3-02. Mandatory fees - Fees for optional purposes or services - Publication for comparison purposes.**

The state board of higher education shall publish on its website in a clear and comprehensible form that allows for ease of comparison among all institutions under its control:

1. The amount of mandatory fees that each institution has determined it shall assess each full-time and part-time student during the ensuing academic year, together with a breakdown of the fees by purpose or service;
2. The amount of any program-specific fees that each institution has determined it shall assess each student in a particular program during the ensuing academic year; and
3. The amount of fees for optional purposes or services that each institution has determined it may assess a full-time or a part-time student during the ensuing academic year, together with a breakdown of the fees by purpose or service.

##### **15-10.3-03. Mandatory fees - Limitation on increases - Exemption.**

The total amount of mandatory fees, other than program-specific fees, which an institution under the control of the state board of higher education assesses each full-time and part-time student, may not increase from one academic year to the ensuing academic year by more than one percent of the latest available average

full-time, resident, on-campus, undergraduate tuition rate at that institution, unless the state board determines that an exemption from the requirements of this section is necessitated as a result of:

1. Documented extraordinary circumstances; or
2. Student demand, as evidenced by a campuswide student election or formal action by an institution's student governing board or committee.

**15-10.3-04. Mandatory fee increases - Criteria - Explanation.**

1. Before the state board of higher education may approve an institution's request to increase a mandatory fee, other than a program-specific fee, the institution shall provide to the board the following information:
  - a. The estimated revenue collection to be generated by the proposed fee increase;
  - b. The specific purpose to which the generated revenue will be allocated;
  - c. Other anticipated tuition and fee increases;
  - d. A delineation of fee increases during the preceding five-year period and the revenues collected as a result of each increase;
  - e. The extent to which students were allowed to participate in the decisionmaking process that preceded and resulted in the request for a fee increase; and
  - f. The approximate number of students that would be assessed the fee each year.
2. The board shall examine the information provided by the requesting institution and shall support its decision to grant or deny a request for a mandatory fee increase with specific reference to each piece of information required by this section.

**SECTION 2. STUDENT FEES - LEGISLATIVE MANAGEMENT STUDY.** The legislative management shall consider studying, during the 2011-12 interim, the assessment of mandatory fees and fees for optional purposes or services by institutions under the control of the state board of higher education, including the manner in which such fees are determined, identified, and justified and whether the programs, purposes, services, and activities supported by such fees should in fact be supported by tuition dollars, legislative appropriations, or other public or private funding sources. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

**SECTION 3. EXPIRATION DATE.** Section 15-10.3-03 is effective through June 30, 2013, and after that date is ineffective.

Approved April 26, 2011  
Filed April 26, 2011

## CHAPTER 121

### HOUSE BILL NO. 1105

(Political Subdivisions Committee)  
(At the request of the State Board of Higher Education)

AN ACT to repeal section 15-12-11 of the North Dakota Century Code, relating to lists of North Dakota state university publications furnished to county auditors.

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

**SECTION 1. REPEAL.** Section 15-12-11 of the North Dakota Century Code is repealed.

Approved March 14, 2011  
Filed March 14, 2011

## CHAPTER 122

### SENATE BILL NO. 2289

(Senators Uglem, G. Lee, Schaible)  
(Representatives Kilichowski, Mueller, Paur)

AN ACT to amend and reenact section 15-20.1-22 of the North Dakota Century Code, relating to grants for innovations.

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

**SECTION 1. AMENDMENT.** Section 15-20.1-22 of the North Dakota Century Code is amended and reenacted as follows:

##### **15-20.1-22. Grants for innovation.**

1. ~~The department shall design and implement a program to provide a dollar-for-dollar match to elementary or secondary teachers or schools and to institutions of higher education for the purpose of provide grants to eligible recipients for the funding innovative science, technology, or innovation for students inof:~~
  - a. Science projects or programs;
  - b. Technology projects or programs; and
  - c. Innovation programs for kindergarten through grade twelve. The department shall award the grants on a competitive basis, elementary, or high school students.
2. ~~An eligible recipient for purposes of this section is a teacher, a school, a school district, or an institution of higher education.~~
3. ~~A grant awarded under this section to an elementary or secondary teacher or school is competitive, may not exceed seven thousand five hundred dollars and a grant awarded to twenty thousand dollars if the recipient is an institution of higher education, and may not exceed twenty five seven thousand five hundred dollars. The in the case of any other recipient.~~
4. ~~In awarding a grant under this section, the department may require dollar-for-dollar matching funds of a grant recipient may come from a public source, a private source, or any combination of public and private sources. If the department requires matching funds, an eligible recipient may obtain those matching funds from any public or nonpublic source.~~
5. The department shall consult with the department of commerce in making award determinations under this section.

Approved April 25, 2011  
Filed April 25, 2011



## CHAPTER 123

### HOUSE BILL NO. 1092

(Education Committee)

(At the request of the State Board for Career and Technical Education)

AN ACT to create and enact a new subsection to section 15-20.4-02 of the North Dakota Century Code, relating to exemption of certain institutions from regulation by the state board for career and technical education; and to amend and reenact subsection 2 of section 15-20.4-03 and subsections 2 and 12 of section 43-12.1-04 of the North Dakota Century Code, relating to authorization to operate academic or professional postsecondary educational institutions and exemptions from the Nurse Practices Act.

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

**SECTION 1.** A new subsection to section 15-20.4-02 of the North Dakota Century Code is created and enacted as follows:

Institutions whose only physical presence in this state consists of students enrolled in practicums, internships, clinicals, or student teaching in this state.

**SECTION 2. AMENDMENT.** Subsection 2 of section 15-20.4-03 of the North Dakota Century Code is amended and reenacted as follows:

2. Prescribe forms and conditions for, receive, investigate as it may deem necessary, and act upon applications for authorization to operate postsecondary educational institutions. Authorization to operate an academic or professional postsecondary educational institution offering educational credentials may be issued only upon approval of the executive officer and the commissioner of the state board of higher education or the commissioner's designee.

<sup>43</sup> **SECTION 3. AMENDMENT.** Subsection 2 of section 43-12.1-04 of the North Dakota Century Code is amended and reenacted as follows:

2. A student practicing nursing as a part of an in-state board-approved nursing education program.

<sup>44</sup> **SECTION 4. AMENDMENT.** Subsection 12 of section 43-12.1-04 of the North Dakota Century Code is amended and reenacted as follows:

12. ~~Upon written notification to the board by an out-of-state nursing program, a student practicing nursing as a part of a nursing education program preparing for initial or advanced licensure as a registered nurse or licensed practical nurse which is approved by a board of nursing and is located in an institution of higher education that offers transferable credit. A student practicing nursing~~

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<sup>43</sup> Section 43-12.1-04 was also amended by section 4 of House Bill No. 1092, chapter 123, and section 3 of House Bill No. 1041, chapter 195.

<sup>44</sup> Section 43-12.1-04 was also amended by section 3 of House Bill No. 1092, chapter 123, and section 3 of House Bill No. 1041, chapter 195.

as part of an out-of-state board-recognized nursing education program, upon written notification to the board and contingent upon clinical site availability.

Approved May 9, 2011  
Filed May 10, 2011

## CHAPTER 124

### HOUSE BILL NO. 1133

(Government and Veterans Affairs Committee)  
(At the request of the Teachers' Fund for Retirement)

AN ACT to amend and reenact subsections 2 and 9 of section 15-39.1-04, subsection 4 of section 15-39.1-10, and sections 15-39.1-10.6, 15-39.1-17, and 15-39.1-20 of the North Dakota Century Code, relating to definitions of beneficiary and salary, incorporation of federal law changes, and modification of death and beneficiary provisions under the teachers' fund for retirement.

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

<sup>45</sup> **SECTION 1. AMENDMENT.** Subsections 2 and 9 of section 15-39.1-04 of the North Dakota Century Code are amended and reenacted are follows:

2. "Beneficiary" means ~~the~~ a person, estate, trust, or organization designated in writing by ~~the member except that in the absence of such designation, if the member is married, the member's spouse must be the primary beneficiary. If the member is married, and if the member wishes to name an alternate beneficiary, the member's spouse must consent in writing to the member's designation. If the member dies without having named a contingent beneficiary to receive any remaining benefits due after the death of the beneficiary, the primary beneficiary may name a contingent beneficiary, a participating member to receive benefits provided by this plan, in receipt of benefits, or otherwise provided under section 15-39.1-17.~~
  
9. "Salary" means a member's earnings in eligible employment under this chapter for teaching, supervisory, administrative, and extracurricular services during a school year reported as salary on the member's federal income tax withholding statements plus any salary reduction or salary deferral amounts under 26 U.S.C. 125, 132(f), 401(k), 403(b), 414(h), or 457 in effect on August 1, ~~2009~~2011. "Salary" includes ~~bonus~~ amounts paid to members for performance, retention, experience, and other service-related bonuses of duties, unless amounts are conditioned on or made in anticipation of an individual member's retirement or termination. The annual salary of each member taken into account in determining benefit accruals and contributions may not exceed the annual compensation limits established under 26 U.S.C. 401(a)(17)(B) in effect on August 1, ~~2009~~2011, as adjusted for increases in the cost of living in accordance with 26 U.S.C. 401(a)(17)(B) in effect on August 1, ~~2009~~2011. A salary maximum is not applicable to members whose participation began before July 1, 1996. "Salary" does not include:
  - a. Fringe benefits or side, nonwage, benefits that accompany or are in addition to a member's employment, including insurance programs, annuities, transportation allowances, housing allowances, meals, lodging, or expense allowances, or other benefits provided by a member's employer.

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<sup>45</sup> Section 15-39.1-04 was also amended by section 1 of House Bill No. 1134, chapter 125.

- b. Insurance programs, including medical, dental, vision, disability, life, long-term care, workforce safety and insurance, or other insurance premiums or benefits.
- c. Payments for unused sick leave, personal leave, vacation leave, or other unused leave.
- d. Early retirement incentive pay, severance pay, or other payments conditioned on or made in anticipation of retirement or termination.
- e. Teacher's aide pay, referee pay, busdriver pay, or janitorial pay.
- f. Amounts received by a member in lieu of previously employer-provided benefits or payments that are made on an individual selection basis.
- g. ~~Recruitment~~ Signing bonuses as defined under section 15.1-09-33.1.
- h. Other benefits or payments not defined in ~~subdivisions a through g of this section~~ which the board determines to be ineligible teachers' fund for retirement salary.

<sup>46</sup> **SECTION 2. AMENDMENT.** Subsection 4 of section 15-39.1-10 of the North Dakota Century Code is amended and reenacted as follows:

- 4. Retirement benefits must begin no later than April first of the calendar year following the year the member attains age seventy and one-half or April first of the calendar year following the year the member terminates covered employment, whichever is later. Payments must be made over a period of time which does not exceed the life expectancy of the member or the joint life expectancy of the member and the beneficiary. Payment of minimum distributions must be made in accordance with section 401(a)(9) of the Internal Revenue Code in effect on August 1, ~~2009~~2011, and the regulations issued under that section, as applicable to governmental plans.

**SECTION 3. AMENDMENT.** Section 15-39.1-10.6 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-10.6. Benefit limitations.**

Benefits with respect to a member participating under former chapter 15-39 or chapter 15-39.1 or 15-39.2 may not exceed the maximum benefits specified under section 415 of the Internal Revenue Code [26 U.S.C. 415] in effect on August 1, ~~2009~~2011, for governmental plans. The maximum dollar benefit applicable under section 415(b)(1)(A) of the Internal Revenue Code must reflect any increases in this amount provided under section 415(d) of the Internal Revenue Code subsequent to August 1, ~~2009~~2011. If a member's benefit is limited by these provisions at the time of retirement or in any subsequent year, the benefit paid in any following calendar year may be increased to reflect all cumulative increases in the maximum dollar limit provided under section 415(d) of the Internal Revenue Code for years after the year payments commenced, but not to more than would have been payable in the absence of the limits under section 415 of the Internal Revenue Code. If an annuitant's benefit is increased by a plan amendment, after the commencement of payments, the member's benefit may not exceed the maximum dollar benefit under section 415(b)(1)

<sup>46</sup> Section 15-39.1-10 was also amended by section 3 of House Bill No. 1134, chapter 125.

(A) of the Internal Revenue Code, adjusted for the commencement age and form of payment, increased as provided by section 415(d) of the Internal Revenue Code. If this plan must be aggregated with another plan to determine the effect of section 415 of the Internal Revenue Code on a member's benefit, and if the benefit must be reduced to comply with section 415 of the Internal Revenue Code, then the reduction must be made pro rata between the two plans, in proportion to the member's service in each plan.

**SECTION 4. AMENDMENT.** Section 15-39.1-17 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-17. Death of member.**

1. ~~If the death of a member who has not acquired a vested interest should occur prior to retirement, a refund of the member's assessments accumulated with interest must be made to the member's beneficiary, or, if there is no beneficiary, the same must be paid to the surviving children, or if none, to the member's estate; provided, however, that if no probate proceedings have been instituted within thirty days of the death of the member, then to the heirs at law who file claim with the fund within one hundred fifty days of the death of the member.~~
2. ~~If the death of a member who has acquired a vested interest should occur prior to retirement, then the member's beneficiary may apply for a refund of the member's assessments accumulated with interest. If there is no beneficiary, then the same must be paid to the surviving children, or if none, to the member's estate; provided, however, that if no probate proceedings have been instituted within thirty days of the death of the member, then to the heirs at law who file claim with the fund within one hundred fifty days of the death of the member. In lieu of a refund, the beneficiary may elect either to receive a monthly annuity in accordance with option one under section 15-39.1-16, with the amount of the annuity being determined as though the deceased member had retired under the option on the day benefits commence to the beneficiary; or the beneficiary may elect to receive for sixty months an amount equal to the monthly annuity the member would have received if the member had attained age sixty five and retired, based on the member's credited service to date of death. If any member under this section has not paid into the fund assessments equal to the amounts required to be paid under section 15-39.1-09, the applicant shall pay any deficiency into the fund before receiving the annuity.~~
3. ~~If a member who has received annuity payments other than a reduced retirement allowance as provided in section 15-39.1-16 dies prior to receiving accumulated annuity payments which exceed the assessments paid by the member to the fund plus interest, or a member who has elected a reduced retirement allowance under option one or two in section 15-39.1-16 dies and the person who was nominated to receive that member's reduced allowance also dies prior to receiving, together, accumulated annuity payments which exceed the assessments paid by the member to the fund plus interest, the member's beneficiary shall receive a final payment equal to the assessments the member paid to the fund plus interest as provided in section 15-39.1-20 less the amount of the annuity payments made. A member may designate a beneficiary to receive death benefits under the plan when the member dies. If the member is not married, the member may designate a person, estate, or organization as primary beneficiary to receive death benefits. If the member is married, the spouse of the member is the member's primary beneficiary~~

unless the spouse consents in writing to the member's alternate primary beneficiary designation. A member also may designate contingent beneficiaries who are entitled to any remaining death benefits if the primary beneficiary dies before receiving all death benefits provided by this plan. If a member dies without naming a contingent beneficiary, the primary beneficiary may name a contingent beneficiary. If there is no named primary or contingent beneficiary, any death benefits will be paid to the estate.

2. If a member has named more than one primary beneficiary, the board shall pay any death benefits to the primary beneficiaries in the percentages designated by the member or, if the member has not designated a percentage for the beneficiaries, in equal percentages. If one or more of the primary beneficiaries has predeceased the member, the board shall pay the predeceased beneficiary's share to the remaining primary beneficiaries. If no primary beneficiaries remain, any death benefits must be paid to the contingent beneficiaries in the same manner.
  - a. If before retiring a nonvested member dies, the plan shall pay the member's account value to the member's beneficiary.
  - b. If before retiring a vested member dies, the member's beneficiary may select a form of payment as follows:
    - (1) If the member dies and was eligible for unreduced retirement benefits and if the beneficiary is one person, the beneficiary may select:
      - (a) A lump sum payment of the member's account value; or
      - (b) A lifetime monthly annuity effective on the first of the month following the month of the member's death. The amount of the monthly annuity is equal to an amount that would have been paid to the beneficiary under a one hundred percent joint and survivor annuity. If the beneficiary dies before receiving the guaranteed member account value, any remaining balance must be paid in a lump sum to a named contingent beneficiary, or if none, to the estate of the recipient.
    - (2) If the member dies and was not eligible for unreduced retirement benefits and if the beneficiary is one person, the beneficiary may select:
      - (a) A lump sum payment of the member's account value; or
      - (b) A lifetime monthly annuity effective on the first of the month following the month of the member's death. The amount of the monthly annuity is equal to an amount that would have been paid to the beneficiary under a one hundred percent joint and survivor annuity without reduction for early retirement and using the disability option reduction factor. If the beneficiary dies before receiving the guaranteed member account value, any remaining balance must be paid in a lump sum to a named contingent beneficiary, or if none, to the estate of the recipient.

- (3) If the member dies and multiple beneficiaries are eligible for death benefits, the plan shall pay the member's account value to the member's beneficiaries.
- c. If a member or beneficiary receiving benefits under this plan dies before the total amount of benefits paid to either or both equals the amount of the member's account value, the difference must be paid in a lump sum to a named beneficiary, or if none, to the estate of the recipient.

**SECTION 5. AMENDMENT.** Section 15-39.1-20 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-20. Withdrawal from fund.**

When a member of the fund ceases to be eligible under the terms of this chapter to participate in the fund, the member may, after a period of one hundred twenty days, withdraw from the fund and is then entitled to receive a refund of assessments accumulated with interest. The one-hundred-twenty-day requirement may be waived by the board when it has evidence the teacher will not be returning to teach in North Dakota. The refund is in lieu of any other benefits to which the member may be entitled under the terms of this chapter, and by accepting the refund, the member is waiving any right to participate in the fund under the same provisions that existed at the time the refund was accepted regardless of whether the member later repurchases refunded service credit. A member or a beneficiary of a member may elect, at the time and under rules adopted by the board, to have any portion of an eligible rollover distribution paid directly in a direct rollover to an eligible retirement plan specified by the member ~~as allowed under~~ the beneficiary to the extent permitted by section 401(a)(31) of the Internal Revenue Code in effect on August 1, ~~2009~~2011.

Approved April 27, 2011  
Filed April 27, 2011

## CHAPTER 125

### HOUSE BILL NO. 1134

(Government and Veterans Affairs Committee)  
(At the request of the Teachers' Fund for Retirement)

AN ACT to create and enact two new subsections to section 15-39.1-04 of the North Dakota Century Code, relating to definitions of member tiers under the teachers' fund for retirement; to amend and reenact subsection 1 of section 15-39.1-09, subsection 1 of section 15-39.1-10, and sections 15-39.1-12, 15-39.1-18, 15-39.1-19.1, and 15-39.1-19.2 of the North Dakota Century Code, relating to employee and employer contribution requirements, eligibility for normal unreduced retirement benefits, eligibility for early reduced retirement benefits, eligibility for disability benefits, and retiree reemployment under the teachers' fund for retirement; and to provide an effective date.

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

<sup>47</sup> **SECTION 1.** Two new subsections to section 15-39.1-04 of the North Dakota Century Code are created and enacted as follows:

"Tier one grandfathered member" for purposes of sections 15-39.1-10 and 15-39.1-12 means a tier one member who, as of June 30, 2013, is vested as a tier one member in accordance with section 15-39.1-11; and

a. Is at least fifty-five years of age; or

b. Has a combined total of years of service credit in the plan and years of age which equals or exceeds sixty-five.

"Tier one nongrandfathered member" for purposes of sections 15-39.1-10 and 15-39.1-12 means a tier one member who does not qualify as a tier one grandfathered member.

**SECTION 2. AMENDMENT.** Subsection 1 of section 15-39.1-09 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided by law, every teacher is a member of the fund and must be assessed upon the teacher's salary seven and seventy-five hundredths percent per annum, which must be deducted, certified, and paid monthly to the fund by the disbursing official of the governmental body by which the teacher is employed. Member contributions increase to nine and seventy-five hundredths percent per annum beginning July 1, 2012, and increase thereafter to eleven and seventy-five hundredths percent per annum beginning July 1, 2014. Except as otherwise provided by law, every governmental body employing a teacher shall pay to the fund eight and seventy-five hundredths percent per annum of the salary of each teacher employed by it. Contributions to be paid by a governmental body employing a teacher increase to ten and seventy-five hundredths percent per annum

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<sup>47</sup> Section 15-39.1-04 was also amended by section 1 of House Bill No. 1133, chapter 124.



beginning July 1, 2012, and increase thereafter to twelve and seventy-five hundredths percent per annum beginning July 1, 2014. The required amount of member and employer contributions must be reduced to seven and seventy-five hundredths percent per annum effective on the July first that follows the first valuation showing a ratio of the actuarial value of assets to the actuarial accrued liability of the teachers' fund for retirement that is equal to or greater than ninety percent. The disbursing official of the governmental body shall certify the governmental body payments and remit the payments monthly to the fund.

<sup>48</sup> **SECTION 3. AMENDMENT.** Subsection 1 of section 15-39.1-10 of the North Dakota Century Code is amended and reenacted as follows:

1. The following members who have acquired a vested right to a retirement annuity as set forth in section 15-39.1-11 are eligible to receive monthly lifetime normal unreduced retirement benefits under this section:
  - a. All tier one and tier two members who have ~~earned three years of teaching service credit and who have~~ attained the age of sixty-five years.
  - b. All tier one grandfathered members who have ~~earned three years of teaching service credit and who have~~ a combined total of years of service credit and years of age which equals or exceeds eighty-five.
  - c. All ~~tier two members who have earned five years of teaching service credit and who have attained the age of sixty five years~~ one nongrandfathered members and tier two members who are at least sixty years of age and who have combined total of years of service credit and years of age which equals or exceeds ninety.
  - d. All ~~tier two members who have earned five years of teaching service credit and who have a combined total of years of service credit and years of age which equals or exceeds ninety.~~

**SECTION 4. AMENDMENT.** Section 15-39.1-12 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-12. Early reduced retirement benefits.**

~~A tier one member who has acquired a vested right to a retirement annuity as set forth in section 15-39.1-11 and who has attained age fifty-five may retire prior to the normal retirement age as set forth in section 15-39.1-10 but the benefits to which the member is then entitled must be reduced to the actuarial equivalent of the benefit credits earned to the date of early retirement from the earlier of age sixty five or the age at which current service plus age equals eighty five. A tier two member who has acquired a vested right to a retirement annuity as set forth in section 15-39.1-11 and who has attained age fifty five may retire prior to the normal retirement age as set forth in section 15-39.1-10 but the benefits to which the member is then entitled must be reduced to the actuarial equivalent of the benefit credits earned to the date of early retirement from the earlier of age sixty five or the age at which current service plus age equals ninety according to the following schedule:~~

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<sup>48</sup> Section 15-39.1-10 was also amended by section 2 of House Bill No. 1133, chapter 124.

1. All tier one grandfathered member benefits must be reduced by six percent per annum from the earlier of:
  - a. Age sixty-five; or
  - b. The age at which the sum of the member's current years of service credit and years of age equals eighty-five.
2. All tier one nongrandfathered member and tier two member benefits must be reduced by eight percent per annum from the earlier of:
  - a. Age sixty-five; or
  - b. The later of:
    - (1) Age sixty; or
    - (2) The age at which the sum of the member's current years of service credit and years of age equals ninety.

**SECTION 5. AMENDMENT.** Section 15-39.1-18 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-18. Disability retirements.**

1. Any member may also retire and receive a disability annuity if, after a period of at least ~~one year~~five years of service as a member in this state, the member ~~suffers from~~qualifies for total disability as determined by the board.
2. The amount of the disability annuity is the ~~greater of the~~ amount computed by the retirement formula in section 15-39.1-10 without consideration of age ~~or the amount computed by that formula without consideration of age but assuming the member had twenty years of credited service.~~ A member determined eligible for a disability annuity under this section may elect to receive an annuity under any of the options allowed in section 15-39.1-16, except the level retirement income with social security option or the partial lump sum option.
3. The disability annuity continues until the death or prior recovery of the disabled annuitant. The board shall ascertain by periodic medical examinations the continued disability status of a disabled annuitant.
4. If a disabled annuitant recovers and returns to active teaching, that annuitant is entitled to the retirement benefit credits which the annuitant earned prior to the time of disablement, and the credits which the annuitant earned after returning to active teaching must be added to those earned prior to disablement.

**SECTION 6. AMENDMENT.** Section 15-39.1-19.1 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-19.1. Retired teachers return to active service - Annuities discontinued on resumption of teaching over annual hour limit.**

1. a. Except as otherwise provided in section 15-39.1-19.2, a retired teacher who is receiving a retirement annuity under chapter 15-39, 15-39.1, or

15-39.2 may not return to covered employment until thirty calendar days have elapsed from the member's retirement date. A retired member may then return to covered employment under an annual hour limit and continue receiving a monthly retirement benefit. The annual hour limit is based on the length of the reemployed retiree's contract as follows:

- (1) Retiree reemployment of nine months or less, annual limit is seven hundred hours;
  - (2) Retiree reemployment of ten months, annual limit is eight hundred hours;
  - (3) Retiree reemployment of eleven months, annual limit is nine hundred hours; or
  - (4) Retiree reemployment of twelve months, annual limit is one thousand hours.
- b. Employment as a noncontracted substitute teacher does not apply to the annual hour limit. Professional development and extracurricular duties do not apply to the annual hour limit.
- c. The retired member and the retired member's employer must notify the fund office in writing within thirty days of the retired member's return to covered employment. ~~Should the retired member's employment exceed the annual hour limit, the retired member must immediately notify the fund office in writing. Failure to notify the fund office results in the loss of one month's annuity benefit. The retired member's monthly benefit must be discontinued the first of the month following the date the member reaches the annual hour limit.~~
- d. A retired member who returns to teaching shall pay the member contributions required by section 15-39.1-09 ~~on those earnings~~the salary received by the retired member ~~after reaching the annual hour limit. The member contributions must be included in the retired member's account value and may not be refunded except as provided under subdivision a of subsection 2 of section 15-39.1-19.1 and section 15-39.1-17.~~
- e. A participating employer who employs a retired member under this section shall pay the employer contributions required by section 15-39.1-09 on the salary of the retired member ~~both before and after the retired member reaches the annual hour limit.~~
- f. A retired teacher who returns to teaching and does not exceed the annual hour limit must be treated as retired for all other purposes under this chapter. A retired teacher may not earn any additional service during the period of reemployment. The retired teacher's benefits may not be adjusted to reflect changes in the retired teacher's age or final average monthly salary at the end of the period of reemployment, any optional form of payment elected under section 15-39.1-16 remains effective during and after the period of reemployment, and additional benefits normally available to an active member, such as disability benefits, are not available to a retired teacher reemployed under this section.

- g. A retired teacher who returns to teaching and exceeds the annual hour limit must immediately notify the fund office in writing. Failure to notify the fund office results in the loss of one month's annuity benefit for the member. The retired member's monthly benefit must be discontinued the first of the month following the date the member reaches the annual hour limit.
2. Upon the retired teacher's subsequent retirement, the member's benefit must be resumed as follows:
- a. If the teacher subsequently retires with less than two years of additional earned credited service, the teacher's contributions paid to the fund after the member's benefit was suspended must be refunded in accordance with section 15-39.1-20 and the teacher is entitled to receive the discontinued annuity, plus any postretirement benefit adjustments granted during the period of reemployment, the first day of the month following the teacher's re-retirement.
  - b. If the teacher subsequently retires with two or more but less than five years of additional earned credited service, the retired person's annuity is the greater of the sum of the discontinued annuity, plus an additional annuity computed according to this chapter based upon years of service and average salaries earned during the period of reemployment plus any postretirement benefit adjustments granted during the period of reemployment, or a recalculated annuity computed according to this chapter based on total years of service credit earned during both employment periods offset by the actuarial value of payments already received. The new annuity is payable the first day of the month following the member's re-retirement.
  - c. If the teacher subsequently retires with five or more years of additional earned credited service, the retired person's annuity is the greater of the sum of the discontinued annuity plus an additional annuity based upon years of service and average salaries earned during the period of reemployment plus any postretirement benefit adjustments granted during the period of reemployment, or a recalculated annuity based on all years of service computed under subsection 2 of section 15-39.1-10. The new annuity is payable the first day of the month following the member's re-retirement.

**SECTION 7. AMENDMENT.** Section 15-39.1-19.2 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-19.2. Retired teachers return to active service - Critical shortage areas and disciplines - Rules.**

1. A retired teacher who is receiving a retirement annuity under chapter 15-39, 15-39.1, or 15-39.2 may elect to return to teaching without losing any benefits under the provisions of this section or elect to return to teaching under the provisions of section 15-39.1-19.1. To return to teaching under this section, a retired teacher must:
  - a. Return to teach in a critical shortage geographical area or subject discipline as determined by the education standards and practices board by rule;

- b. If retired after January 1, 2001, have been receiving a retirement annuity for at least one year. A retired teacher may perform noncontracted substitute teaching duties but may not engage in full-time or part-time teaching duties during the one-year separation from service; and
  - c. Notify the fund office in writing within thirty days of the retired member's return to covered employment. The retired member's employer must also notify the fund office in writing within thirty days of the retired member's return to covered employment.
2. A retired teacher who returns to teaching under this section ~~is not required to~~ shall pay the ~~employee assessment~~ member contributions required by section 15-39.1-09 on the salary of the retired member. The member contributions must be included in the retired member's account value and may not be refunded except as provided under section 15-39.1-17. A retired teacher who returns to teaching under the provisions of this section must be treated as retired for all other purposes under this chapter. A retired teacher may not earn any additional service during the period of reemployment. The retired teacher's benefits may not be adjusted to reflect changes in the retired teacher's age or final average monthly salary at the end of the period of reemployment, any optional form of payment elected under section 15-39.1-16 remains effective during and after the period of reemployment, and additional benefits normally available to an active member, such as disability benefits, are not available to a retired teacher reemployed under this section.
  3. A participating employer who employs a retired member under this section shall pay the employer contributions required by section 15-39.1-09 on the salary of the retired member.

**SECTION 8. EFFECTIVE DATE.** Sections 6 and 7 of this Act become effective July 1, 2012, and sections 3, 4, and 5 of this Act become effective July 1, 2013.

Approved April 28, 2011  
Filed April 28, 2011

# ELEMENTARY AND SECONDARY EDUCATION

## CHAPTER 126

### HOUSE BILL NO. 1049

(Legislative Management)  
(Tribal and State Relations Committee)

AN ACT to provide for a superintendent of public instruction study; and to provide for reports to the legislative management.

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

#### **SECTION 1. INDIAN EDUCATION ISSUES STUDIED BY SUPERINTENDENT OF PUBLIC INSTRUCTION - REPORTS TO THE LEGISLATIVE MANAGEMENT.**

Between July 1, 2011, and July 1, 2013, the superintendent of public instruction shall conduct a study of Indian education issues to develop criteria for grants to low-performing schools. In conducting this study, the superintendent of public instruction shall determine:

1. The extent to which governance and collaborative models, including agreements with tribal governments, the bureau of Indian education, and the state, have on improving student achievement;
2. Whether success models are available and what makes these models effective; and
3. Whether federal, state, or local barriers exist that prevent schools and students from performing at high rates of student achievement.

The superintendent of public instruction may utilize a consultant in conducting this study. The superintendent of public instruction shall report periodically to a legislative management interim committee on the study conducted under this section.

Approved April 19, 2011  
Filed April 20, 2011

## CHAPTER 127

### HOUSE BILL NO. 1214

(Representatives Skarphol, R. Kelsch)  
(Senators Grindberg, Wardner, Robinson)

AN ACT to create and enact sections 15.1-02-18.1 and 15.1-02-18.2 of the North Dakota Century Code, relating to the statewide longitudinal data system and the mandatory provision of information; to amend and reenact section 15.1-02-18, subsection 6 of section 23-02.1-27, and section 52-01-03 of the North Dakota Century Code, relating to the statewide longitudinal data system and to the disclosure of records; and to repeal section 44-04-18.14 of the North Dakota Century Code, relating to the followup information on North Dakota education and training system.

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

**SECTION 1. AMENDMENT.** Section 15.1-02-18 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-02-18. Statewide longitudinal data system committee - Membership - Powers and duties - Report to interim committee - Continuing appropriation.**

1. The statewide longitudinal data system committee consists of:
  - a. The chancellor of the board of higher education or the chancellor's designee-;
  - b. The superintendent of public instruction or superintendent of public instruction's designee-;
  - c. The chief information officer or chief information 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 director of the North Dakota council of educational leaders or the 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.
2. The governor shall appoint the ~~chair~~chairman of the committee.
3. The committee may appoint ~~advisory~~additional committees ~~that would~~to serve ~~the committee~~ in an advisory capacity ~~to the committee~~.
- ~~3.4.~~ The committee shall manage a longitudinal data system ~~which~~that:
  - a. Provides for the dissemination of management information to stakeholders and partners of state education, training, and employment systems; and
  - b. Uses data from educational and workforce systems as central sources of longitudinal data.
4. ~~The information technology department, at the direction of the committee, shall maintain a statewide longitudinal data system among education, workforce, and training entities. The department and the committee may, subject to federal and state privacy laws, enter interagency agreements, including agreements designating authorized representatives of the educational agencies participating in the system pursuant to the Family Educational Rights and Privacy Act (FERPA) [20 U.S.C. 1232g; 34 CFR 99].~~
5. The committee shall set policy and adopt rules relating to access to and the collection, storage, and sharing of information and the systems necessary to perform those functions, subject to applicable federal and state privacy laws and interagency agreements and restrictions relating to confidential information required to conform to applicable federal and state privacy laws. The committee shall provide operational oversight for information sharing activities and make recommendations for and provide oversight of information sharing budgets. The committee may authorize studies to benefit and improve workforce training and education.
6. The committee shall provide a report to the information technology committee, interim committee on education issues, and interim committee on economic development on the status of the statewide longitudinal data system. The report must include recommendations for further development, cost proposals, proposals for legislation, and data sharing governance.
7. The committee may solicit and receive moneys from public and private sources and those funds are appropriated on a continuing basis for the support of the longitudinal data system.
8. ~~The information technology department shall provide staff and other necessary support to the committee.~~

**SECTION 2.** Section 15.1-02-18.1 of the North Dakota Century Code is created and enacted as follows:

**15.1-02-18.1. Statewide longitudinal data system - Information technology department - Powers and duties.**

1. The information technology department, at the direction of the statewide longitudinal data system committee, shall maintain a statewide longitudinal data system among education, workforce, and training entities.



2. The information technology department and the statewide longitudinal data system committee may, subject to federal and state privacy laws, enter interagency agreements, including agreements designating authorized representatives of the educational agencies participating in the system pursuant to the Family Educational Rights and Privacy Act [20 U.S.C. 1232g; 34 CFR 99].
3. The information technology department shall provide staff and other necessary support to the statewide longitudinal data system committee.

**SECTION 3.** Section 15.1-02-18.2 of the North Dakota Century Code is created and enacted as follows:

**15.1-02-18.2. State agencies - Mandatory provision of information - Confidentiality.**

1. The information technology department may request from any state agency:
  - a. All information required by 20 U.S.C. 9871(e)(2)(D); and
  - b. Any other educational information the statewide longitudinal data system committee determines is required for a longitudinal data system to comply with state or federal law.
2. Subject to applicable restrictions on the use and disclosure of confidential information required to comply with federal and state privacy laws, any state agency receiving a request for information under subsection 1 shall provide the information at the time and in the manner required by the information technology department.

<sup>49</sup> **SECTION 4. AMENDMENT.** Subsection 6 of section 23-02.1-27 of the North Dakota Century Code is amended and reenacted as follows:

6. The state department of health may grant limited access to birth and death information to the department of human services and the department of information technology necessary for the purpose of completing its official duties.

**SECTION 5. AMENDMENT.** Section 52-01-03 of the North Dakota Century Code is amended and reenacted as follows:

**52-01-03. Disclosure of information.**

1. Except as otherwise provided in this section, information obtained from any employing unit or individual pursuant to the administration of the North Dakota unemployment compensation law and determinations as to the benefit rights of any individual must be held confidential and may not be disclosed or be open to public inspection in any manner revealing the individual's or employing unit's identity. Any claimant or claimant's legal representative must be supplied with information from the records of the unemployment insurance division, to the extent necessary for the proper presentation of the claimant's claim in any proceeding under the North Dakota unemployment compensation law with respect to the claim.

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<sup>49</sup> Section 23-02.1-27 was also amended by section 2 of House Bill No. 1084, chapter 185.

2. Subject to restrictions as the bureau by rule may prescribe, the information may be made available to any agency of this or any other state, or any federal agency, charged with the administration of any unemployment compensation law or the maintenance of a system of public employment offices, or the bureau of internal revenue of the United States department of the treasury, and information obtained in connection with the administration of the employment service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service. Upon a request, the bureau shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, and may furnish to any state agency similarly charged, the name, address, ordinary occupation, and employment status of each recipient of benefits and the recipient's rights to further benefits under the North Dakota unemployment compensation law. The bureau may request the comptroller of the currency of the United States to cause an examination of the correctness of any return or report of any national banking association, rendered pursuant to the North Dakota unemployment compensation law, and in connection with the request, may transmit any report or return to the comptroller of the currency of the United States as provided in subsection c of section 3305 of the federal Internal Revenue Code. The bureau shall request and exchange information for purposes of income and eligibility verification to meet the requirements of section 1137 of the Social Security Act. Job service North Dakota may enter into memoranda of understanding with the United States census bureau to furnish unemployment insurance data to the census bureau and for sharing of information with job service North Dakota.
3. Job service North Dakota may provide workforce safety and insurance, the labor commissioner, the driver's license division of the department of transportation, the department of human services, the department of commerce, the state tax commissioner, and the ~~followup information on North Dakota education and training information technology department for purposes of the statewide longitudinal data system with information obtained pursuant to the administration of the unemployment insurance program, and may enter into interagency agreements with those entities for the exchange of information that will enhance the administration of the unemployment insurance program. Any information furnished pursuant to this subsection or pursuant to interagency agreements authorized by this subsection is to be used only for governmental purposes ~~only~~.~~
4. The bureau may provide any state agency or a private entity with the names and addresses of employing units for the purpose of jointly publishing or distributing publications or other information as provided in section 54-06-04.3. Any information so provided may only be used for the purpose of jointly publishing or distributing publications or other information as provided in section 54-06-04.3.
5. Whenever the bureau obtains information on the activities of a contractor doing business in this state of which officials of the secretary of state, workforce safety and insurance, or the state tax commissioner may be unaware and that may be relevant to duties of those officials, the bureau shall provide any relevant information to those officials for the purpose of administering their duties.
6. The bureau shall request and exchange information as required of it under federal law with any specified governmental agencies. Any information so

provided may be used only for the purpose of administering the duties of such governmental agencies.

**SECTION 6. REPEAL.** Section 44-04-18.14 of the North Dakota Century Code is repealed.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 128

### SENATE BILL NO. 2311

(Senators G. Lee, Luick)  
(Representatives L. Meier, Rust)

AN ACT to create and enact a new section to chapter 15.1-02 of the North Dakota Century Code, relating to the North Dakota teacher of the year award.

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

**SECTION 1.** A new section to chapter 15.1-02 of the North Dakota Century Code is created and enacted as follows:

##### **North Dakota teacher of the year award - Selection - Announcement.**

1. Annually, the superintendent of public instruction shall accept nominations for the North Dakota teacher of the year award.
2. The superintendent of public instruction shall develop and publish the criteria by which all nominees must be considered and shall appoint an eight-member committee to review the nominations and select the North Dakota teacher of the year. The committee must consist of:
  - a. A former North Dakota teacher of the year award recipient;
  - b. A representative of the North Dakota council of educational leaders;
  - c. A representative of the North Dakota department of career and technical education;
  - d. A representative of the North Dakota department of public instruction;
  - e. A representative of the North Dakota education association;
  - f. A representative of the North Dakota school boards association; and
  - g. A representative of nonpublic schools in this state.
3. By September thirtieth of each year, the governor and the superintendent of public instruction shall jointly announce the award recipient and serve as the exclusive hosts of a ceremony and reception honoring the teacher of the year. The ceremony and reception must take place in the memorial hall of the state capitol or, if requested by the award recipient, at a location in the municipality within which the recipient resides or works.

Approved April 27, 2011  
Filed April 27, 2011

## CHAPTER 129

### HOUSE BILL NO. 1248

(Representatives Koppelman, Karls, Sanford, Delmore)  
(Senators Wardner, Nelson)

AN ACT to create and enact chapter 15.1-04.1 of the North Dakota Century Code, relating to entry into the compact on educational opportunity for military children; to amend and reenact sections 15.1-06-01 and 15.1-21-02.1 and subsection 1 of section 15.1-29-13 of the North Dakota Century Code, relating to the age of school admission, the issuance of high school diplomas, and the charging of tuition; to provide for a report; to provide a funding source; and to provide an expiration date.

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

**SECTION 1.** Chapter 15.1-04.1 of the North Dakota Century Code is created and enacted as follows:

##### **15.1-04.1-01. Compact on educational opportunity for military children.**

The compact on educational opportunity for military children is entered with all jurisdictions legally joining therein, in the form substantially as follows:

#### **ARTICLE I - PURPOSE**

It is the purpose of this compact to remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents by:

1. Facilitating the timely enrollment of children of military families and ensuring that they are not placed at a disadvantage due to difficulty in the transfer of educational records from a sending to a receiving school district or variations in entrance or age requirements;
2. Facilitating the student placement process to ensure that children of military families are not disadvantaged by variations in attendance requirements, scheduling, sequencing, grading, course content, or assessment;
3. Facilitating the qualification and eligibility of children of military families for enrollment, educational programs, and participation in extracurricular academic, athletic, and social activities;
4. Facilitating the on-time graduation of children of military families;
5. Providing for the promulgation and enforcement of administrative rules implementing this compact;
6. Providing for the uniform collection and sharing of information among member states, school districts, and military families under this compact;

7. Promoting coordination between this compact and other compacts affecting the children of military families; and
8. Promoting flexibility and cooperation between the educational system, parents, and the student in order to achieve educational success for the children of military families.

## **ARTICLE II - DEFINITIONS**

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

1. "Active duty" means full-time duty status in the active uniformed services of the United States, including members of the national guard and reserve on active duty orders pursuant to 10 U.S.C. 1209 and 1211.
2. "Children of military families" means school-aged children, enrolled in kindergarten through grade twelve, in the household of an active duty member.
3. "Commission" means the commission that is created under article IX of this compact.
4. "Compact commissioner" means the voting representative of each compacting state appointed pursuant to article VIII of this compact.
5. "Deployment" means the period one month before the service member's departure from the home station on military orders through six months after return to the home station.
6. "Educational records" means official records, files, and data directly related to a student and maintained by the student's school or school district, including records encompassing all the material kept in the student's cumulative folder such as general identifying data, records of attendance and of academic work completed, records of achievement and results of evaluative tests, health data, disciplinary status, test protocols, and individualized education programs.
7. "Extracurricular activities" means a voluntary activity sponsored by the school or school district or an organization sanctioned by the school district, including preparation for involvement in public performances, contests, athletic competitions, demonstrations, displays, and club activities.
8. "Member state" means a state that has enacted this compact.
9. "Military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other facility under the jurisdiction of the department of defense, including any leased facility that is located within a state. The term does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.
10. "Nonmember state" means a state that has not enacted this compact.
11. "Receiving state" means the state to which a child of a military family is sent, brought, or caused to be sent or brought.

12. "Rule" means a written statement by the commission promulgated pursuant to article XII of this compact which:
  - a. Is of general applicability;
  - b. Implements, interprets, or prescribes a policy or provision of the compact;
  - c. Is an organizational, procedural, or practice requirement of the commission;
  - d. Has the force and effect of law in a member state; and
  - e. Includes the amendment, repeal, or suspension of an existing rule.
13. "Sending state" means the state from which a child of a military family is sent, brought, or caused to be sent or brought.
14. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Northern Marianas Islands, and any other United States territory.
15. "Student" means the child of a military family who is formally enrolled in kindergarten through grade twelve and for whom a school district receives public funding.
16. "Transition" means:
  - a. The formal and physical process of transferring from one school to another; or
  - b. The period of time during which a student moves from one school in the sending state to another school in the receiving state.
17. "Uniformed services" means the army, navy, air force, marine corps, and coast guard, and the commissioned corps of the national oceanic and atmospheric administration and public health services.
18. "Veteran" means an individual who served in the uniformed services and who was discharged or released therefrom under conditions other than dishonorable.

### **ARTICLE III - APPLICABILITY**

1. Except as otherwise provided in subsection 2, this compact applies to the children of:
  - a. Active duty members of the uniformed services as defined in this compact, including members of the national guard and reserve on active duty orders pursuant to 10 U.S.C. 1209 and 1211;
  - b. Members or veterans of the uniformed services who are severely injured and medically discharged or retired for a period of one year after medical discharge or retirement; and

- c. Members of the uniformed services who die on active duty or as a result of injuries sustained on active duty, for a period of one year after the member's death.
2. This compact only applies to school districts as defined in this compact.
3. This compact does not apply to the children of:
  - a. Inactive members of the national guard and military reserves;
  - b. Members of the uniformed services now retired, except as provided in subsection 1;
  - c. Veterans of the uniformed services, except as provided in subsection 1; and
  - d. Other United States department of defense personnel and other federal agency civilian and contract employees not defined as active duty members of the uniformed services.

#### **ARTICLE IV - EDUCATIONAL RECORDS AND ENROLLMENT**

1. If official educational records cannot be released to the parents for the purpose of transfer, the custodian of the records in the sending state shall prepare and furnish to the parent a complete set of unofficial educational records containing uniform information as determined by the commission. Upon receipt of the unofficial educational records by a school in the receiving state, the school shall enroll and appropriately place the student based on the information provided in the unofficial records pending validation by the official records, as quickly as possible.
2. Simultaneous with the enrollment and conditional placement of the student, the school in the receiving state shall request the student's official educational records from the school in the sending state. Upon receipt of this request, the school in the sending state shall process and furnish the official educational records to the school in the receiving state within ten days or within the time determined to be reasonable under the rules promulgated by the commission.
3. Compacting states shall give thirty days from the date of enrollment, or the time determined to be reasonable under the rules promulgated by the commission, for students to obtain any immunization required by the receiving state. For a series of immunizations, initial vaccinations must be obtained within thirty days or within the time determined to be reasonable under the rules promulgated by the commission.
4. Students must be allowed to continue their enrollment at grade level in the receiving state commensurate with their grade level in the sending state at the time of transition, regardless of age. A student who satisfactorily has completed the prerequisite grade level in the sending state is eligible for enrollment in the next highest grade level in the receiving state, regardless of age. A student transferring after the start of the school calendar in the receiving state shall enter the school in the receiving state on the validated level from the school in the sending state.



## **ARTICLE V - PLACEMENT AND ATTENDANCE**

1. When a student transfers before or during the regular school calendar, the receiving state school shall initially honor placement of the student in educational courses based on the student's enrollment in the sending school or educational assessments conducted at the school in the sending state, if the courses are offered. Course placement includes honors, international baccalaureate, advanced placement, and career and technical education courses. Continuing the student's academic program from the sending school and promoting placement in challenging courses should be paramount when considering placement. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement and continued enrollment of the student in the course.
2.
  - a. The receiving school initially shall honor placement of the student in educational programs based on current educational assessments conducted at the sending school or based on placement in like programs in the sending school. Such programs include gifted and talented programs and English language learner programs. This does not preclude the receiving school from performing subsequent evaluations to ensure appropriate placement of the student.
  - b. This subsection does not require a school district to create programs or offer services that were not in place before the enrollment of the student unless the programs or services are required by federal law.
3.
  - a. In compliance with the Individuals With Disabilities Education Act [20 U.S.C. 1400 et seq.], the receiving school initially shall provide comparable services to a student with disabilities based on the student's current individualized education program; and
  - b. In compliance with the requirements of section 504 of the Rehabilitation Act [29 U.S.C. 794] and with the Americans with Disabilities Act [42 U.S.C. 12131 et seq.], the receiving school shall make reasonable accommodations and modifications to address the needs of incoming students with disabilities, subject to an existing 504 or title II plan, to provide the student with equal access to education. This does not preclude the receiving school from performing subsequent evaluations to ensure appropriate placement of the student.
4. School district administrators have flexibility in waiving course or program prerequisites and other preconditions for placement in courses or programs offered by the district.
5. A student whose parent or legal guardian is an active duty member of the uniformed services and has been called to duty for, is on leave from, or has immediately returned from deployment to a combat zone or a combat support posting must be granted additional excused absences by the school district superintendent to visit with the student's parent or legal guardian relative to the leave or deployment of the parent or guardian.

## **ARTICLE VI - ELIGIBILITY**

1. Eligibility for enrollment:

- a. A special power of attorney, relative to the guardianship of a child of a military family and executed under applicable law is sufficient for the purposes of enrollment and all other actions requiring parental participation and consent.
  - b. A school district may not charge tuition to a transitioning military child placed in the care of a noncustodial parent or other individual standing in loco parentis who lives in a school district other than that of the custodial parent.
  - c. A transitioning military child, placed in the care of a noncustodial parent or other person standing in loco parentis who lives in a school district other than that of the custodial parent, may continue to attend the school in which the child was enrolled while residing with the custodial parent.
2. The superintendent of public instruction, school districts, and the North Dakota high school activities association shall facilitate the opportunity for transitioning military children's inclusion in extracurricular activities, regardless of application deadlines, to the extent they are otherwise qualified.

### **ARTICLE VII - GRADUATION**

To facilitate the on-time graduation of children of military families, the superintendent of public instruction and school district administrators shall incorporate the following procedures:

1. School district administrators shall waive specific courses required for graduation if similar coursework has been satisfactorily completed in another school district or shall provide reasonable justification for denial. Should a waiver not be granted to a student who would qualify to graduate from the sending school, the receiving school district shall provide an alternative means of acquiring required coursework so that graduation may occur on time.
2. States must accept exit or end-of-course examinations required for graduation from the sending state, national norm-referenced achievement tests, or alternative testing in lieu of testing requirements for graduation in the receiving state. If these alternatives cannot be accommodated by the receiving state for a student transferring in the student's senior year, then subsection 3 applies.
3. Should a military student transferring at the beginning or during the student's senior year be ineligible to graduate from the receiving school district after all alternatives have been considered, the sending and receiving school districts shall ensure the receipt of a diploma from the sending school district if the student meets the graduation requirements of the sending school district. If one of the states in question is not a member of this compact, the member state shall use best efforts to facilitate the on-time graduation of the student in accordance with subsections 1 and 2.

### **ARTICLE VIII - STATE COORDINATION**

1. Each member state, through the creation of a state council or use of an existing entity, shall provide for the coordination among its state agencies, school districts, and military installations concerning the state's participation in, and compliance with, this compact and commission activities. While each member state may determine the membership of its own state council, its membership must include at least the superintendent of public instruction, a

gubernatorial appointee who is the superintendent of a school district with a high concentration of military children, a representative from a military installation, one member of the legislative assembly appointed by the chairman of the legislative management, a gubernatorial appointee who represents the executive branch of government, and any other individuals or group representatives that the state council determines appropriate. A member state that does not have a school district determined to contain a high concentration of military children may appoint a superintendent from another school district to represent school districts on the state council.

2. The state council of each member state shall appoint or designate a military family education liaison to assist military families and the state in facilitating the implementation of this compact; provided, however, in North Dakota, the appointment shall be made by the adjutant general of the national guard.
3. The compact commissioner responsible for the administration and management of the state's participation in the compact must be appointed by the governor or as otherwise determined by each member state.
4. The compact commissioner and the military family education liaison are ex officio members of the state council, unless either is already a full voting member of the state council.

#### **ARTICLE IX - INTERSTATE COMMISSION ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN**

1. The interstate commission on educational opportunity for military children is created.
2. The activities of the commission are the formation of public policy and are a discretionary state function.
3. The commission is a body corporate and joint agency of the member states and has all the responsibilities, powers, and duties set forth herein, and any additional powers as may be conferred upon it by a subsequent concurrent action of the respective legislatures of member states in accordance with the terms of this compact.
4. The commission consists of one commission voting representative from each member state who must be that state's compact commissioner.
  - a. Each member state represented at a meeting of the commission is entitled to one vote.
  - b. A majority of the total member states constitutes a quorum for the transaction of business unless a larger quorum is required by the bylaws of the commission.
  - c. A representative may not delegate a vote to another member state. If the compact commissioner is unable to attend a meeting of the commission, the governor or state council may delegate voting authority to another person from the state for a specified meeting.
  - d. The bylaws may provide for meetings of the commission to be conducted by telecommunications or electronic communication.

5. The commission consists of ex officio, nonvoting representatives who are members of interested organizations. Ex officio members, as defined in the bylaws, may include members of the representative organizations of military family advocates, school district officials, parent and teacher groups, the department of defense, the education commission of the states, the interstate agreement on the qualification of educational personnel, and other interstate compacts affecting the education of children of military members.
6. 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 member states, shall call additional meetings.
7. The commission shall establish an executive committee, whose members must include the officers of the commission and any other members of the commission as determined by the bylaws. Members of the executive committee shall serve a one-year term. Members of the executive committee are entitled to one vote each. The executive committee may act on behalf of the commission, with the exception of rulemaking, during periods when the commission is not in session. The executive committee shall oversee the day-to-day activities of the administration of the compact, including enforcement and compliance with the compact, its bylaws and rules, and other such duties as determined necessary. The department of defense is an ex officio nonvoting member of the executive committee.
8. The commission shall establish bylaws and rules that provide for conditions and procedures under which the commission shall make its information and official records available to the public for inspection or copying. The commission may exempt from disclosure information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.
9. The commission shall give public notice of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The commission and its committees may close a meeting, or portion thereof, when it determines by two-thirds vote that an open meeting would be likely to:
  - a. Relate solely to the commission's internal personnel practices and procedures;
  - b. Disclose matters specifically exempted from disclosure by federal and state statute;
  - c. Disclose trade secrets or commercial or financial information that is privileged or confidential;
  - d. Involve accusing a person of a crime or formally censuring a person;
  - e. Disclose information of a personal nature when disclosure would constitute a clearly unwarranted invasion of personal privacy;
  - f. Disclose investigative records compiled for law enforcement purposes; or
  - g. Specifically relate to the commission's participation in a civil action or other legal proceeding.

10. The commission shall cause its legal counsel or designee to certify that a meeting may be closed and shall reference each relevant exemptible provision for any meeting, or portion of a meeting, which is closed pursuant to this 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 and the record of a roll call vote. 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.
11. The commission shall collect standardized data concerning the educational transition of the children of military families under this compact as directed through its rules, which shall specify the data to be collected, the means of collection, and data exchange and reporting requirements. The methods of data collection, exchange, and reporting, insofar as is reasonably possible, must conform to current technology and coordinate its information functions with the appropriate custodian of records as identified in the bylaws and rules.
12. The commission shall create a process that permits military officials, education officials, and parents to inform the commission if and when there are alleged violations of the compact or its rules or when issues subject to the jurisdiction of the compact or its rules are not addressed by the state or local education agency. This subsection does not create a private right of action against the commission, any member state, or any school district.

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

The commission may:

1. Provide for dispute resolution among member states;
2. Adopt rules that have the force and effect of law and are binding in the compact states to the extent and in the manner provided in this compact and take all necessary actions to effect the goals, purposes, and obligations as enumerated in this compact;
3. Issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of the interstate compact, its bylaws, rules, and actions;
4. Monitor compliance with the compact provisions, the rules adopted by the commission, and the bylaws;
5. Establish and maintain offices within one or more of the member states;
6. Purchase and maintain insurance and bonds;
7. Borrow, accept, hire, or contract for services of personnel;
8. Establish and appoint committees, including an executive committee as required by article IX, which may act on behalf of the commission in carrying out its powers and duties;
9. Elect or appoint officers, attorneys, employees, agents, and consultants and fix their compensation; define their duties; determine their qualifications; and

establish the commission's personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel;

10. Accept, receive, use, and dispose of donations and grants of money, equipment, supplies, materials, and services;
11. Lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed;
12. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property;
13. Establish a budget and make expenditures;
14. Adopt a seal and bylaws governing the management and operation of the commission;
15. Report annually to the legislatures, governors, judiciary, and state councils of the member states concerning the activities of the commission during the preceding year and include any recommendations that were adopted by the commission;
16. Coordinate education, training, and public awareness regarding the compact, its implementation, and operation for officials and parents involved in such activity;
17. Establish uniform standards for the reporting, collecting, and exchanging of data;
18. Maintain corporate books and records in accordance with the bylaws;
19. Perform such functions as may be necessary or appropriate to achieve the purpose of this compact; and
20. Provide for the uniform collection and sharing of information between and among member states, schools, and military families under this compact.

#### **ARTICLE XI - ORGANIZATION AND OPERATION OF THE COMMISSION**

1. The commission, by a majority of the members present and voting, within twelve months after the first commission meeting, shall adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including:
  - a. Establishing the fiscal year of the commission;
  - b. Establishing an executive committee and such other committees as may be necessary;
  - c. Providing for the establishment of committees and for governing any general or specific delegation of authority or function of the commission;
  - d. Providing reasonable procedures for calling and conducting meetings of the commission and ensuring reasonable notice of each meeting;

- e. Establishing the titles and responsibilities of the officers and staff of the commission;
  - f. Providing a mechanism for concluding the operations of the commission and the return of surplus funds that may exist upon the termination of the compact after the payment and reserving of all its debts and obligations; and
  - g. Providing startup rules for initial administration of the compact.
2. The commission, by a majority of the members, shall elect annually from among its members a chairman, a vice chairman, and a treasurer, each of whom has the authority and duties specified in the bylaws. The chairman or, in the chairman's absence or disability, the vice chairman shall preside at all meetings of the commission. The officers so elected serve without compensation or remuneration from the commission; provided that, subject to the availability of budgeted funds, the officers are entitled to be reimbursed for ordinary and necessary costs and expenses incurred by them in the performance of their responsibilities as officers of the commission.
3. a. The executive committee has the authority and duties set forth in the bylaws, including:
- (1) Managing the affairs of the commission in a manner consistent with the bylaws and purposes of the commission;
  - (2) Overseeing an organizational structure and appropriate procedures for the commission to provide for the creation of rules, operating procedures, and administrative and technical support functions; and
  - (3) Planning, implementing, and coordinating communications and activities with other state, federal, and local government organizations in order to advance the goals of the commission.
- b. The executive committee, subject to the approval of the commission, may appoint or retain an executive director for such period, upon such terms and conditions, and for such compensation as the commission determines appropriate. The executive director shall serve as secretary to the commission but may not be a member of the commission. The executive director shall hire and supervise such other persons as may be authorized by the commission.
4. The commission's executive director and its employees are 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 person had a reasonable basis for believing occurred, within the scope of commission employment, duties, or responsibilities; provided, those individuals are not protected from suit or liability for damage, loss, injury, or liability caused by their intentional or willful and wanton misconduct.
- a. The liability of the commission's executive director and employees or commission representatives, acting within the scope of that individual's employment or duties for acts, errors, or omissions occurring within that individual's state, may not exceed the limits of liability set forth under the

- constitution and laws of that state for state officials, employees, and agents. The commission is considered to be an instrumentality of the states for the purposes of any such action. This subsection does not protect an individual from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of the individual.
- b. The commission shall defend the executive director and its employees and, subject to the approval of the attorney general or other appropriate legal counsel of the member state represented by a commission representative, shall defend a 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 commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of the individual.
- c. To the extent not covered by the state involved, member state, or the commission, the representatives or employees of the commission must be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against the individuals arising out of an actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that those individuals had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of those individuals.

## **ARTICLE XII - RULEMAKING FUNCTIONS OF THE COMMISSION**

1. The commission shall adopt reasonable rules in order to effectively and efficiently achieve the purposes of this compact. If the commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this compact, or the powers granted by this compact, then such an action by the commission is invalid and has no force or effect.
2. Rules must be made pursuant to a rulemaking process that substantially conforms to the Model State Administrative Procedure Act of the national conference of commissioners on uniform state laws, as may be appropriate to the operations of the commission.
3. Within thirty days after a rule is adopted, any person may file a petition for judicial review of the rule; provided, that the filing of the petition does 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 commission consistent with applicable law and shall not find the rule to be unlawful if the rule represents a reasonable exercise of the commission's authority.
4. If a majority of the legislatures of the compacting states rejects a rule by enactment of a statute or resolution in the same manner used to adopt the compact, then the rule has no further force and effect in any compacting state.



**ARTICLE XIII - OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION**

1.
  - a. Each member state shall enforce this compact to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder have standing as statutory law.
  - b. 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 all service of process in any proceeding and has standing to intervene in the 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 adopted rules.
2. If the commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact, or the bylaws or adopted rules, the 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 commission, and specify the conditions by which the defaulting state must cure its default; and
  - b. Offer technical assistance to the member state.
3. If the defaulting state fails to cure the default, the defaulting state shall terminate from the compact upon an affirmative vote of a majority of the member states and all rights, privileges, and benefits conferred by this compact are terminated from 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, except that in the event of a default by this state, its total financial responsibility is limited to the amount of its most recent annual assessment.
4. Suspension or 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 must be given by the commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each member state.
5. The state that has been suspended or terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of suspension or termination, to a maximum of five thousand dollars multiplied by the number of years that the state has been a member of the compact. In the event that this state is suspended or terminated, its total financial responsibility is limited to the amount of its most recent annual assessment.
6. The commission may not bear any costs relating to any state that has been found to be in default or which has been suspended or terminated from the compact, unless otherwise mutually agreed upon in writing between the commission and the defaulting state.

7. 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 party must be awarded all costs of such litigation, including reasonable attorney's fees.
8. The 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 and between member and nonmember states. The commission shall adopt a rule providing for mediation and binding dispute resolution for disputes as appropriate.

#### **ARTICLE XIV - FINANCING OF THE COMMISSION**

1. The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.
2.
  - a. The commission may levy on and collect an annual assessment from each member state 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 the commission's annual budget as approved each year.
  - b. The aggregate annual assessment amount must be allocated based upon a formula to be determined by the commission, which shall adopt a rule binding upon all member states.
  - c. The annual assessment applicable to this state may not exceed an amount equal to two dollars multiplied by the latest available number of children of military families in this state.
  - d. This state may not be held liable for the payment of any special assessment or any assessment other than the annual assessment in the amount established by this subsection.
3. 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.
4. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission are subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission must be audited yearly by a certified or licensed public accountant and the report of the audit must be included in and become part of the annual report of the commission.

#### **ARTICLE XV - MEMBER STATES, EFFECTIVE DATE, AND AMENDMENT**

1. Any state is eligible to become a member state.
2. The compact becomes effective and binding upon legislative enactment of the compact into law by no less than ten states. The effective date may not be earlier than December 1, 2007. Thereafter, the compact becomes effective and binding as to any other member state upon enactment of the compact into law by that state. The governors of nonmember states or their designees must

be invited to participate in the activities of the commission on a nonvoting basis prior to adoption of the compact by all states.

3. The commission may propose amendments to the compact for enactment by the member states. No amendment may become effective and binding upon the commission and the member states until the amendment is enacted into law by unanimous consent of the member states.

#### **ARTICLE XVI - WITHDRAWAL AND DISSOLUTION**

1.
  - a. Once effective, the compact continues in force and remains binding upon each member state, provided that a member state may withdraw from the compact by specifically repealing the statute that enacted the compact into law, except that in the case of this state, withdrawal from the compact may also be accomplished by statutorily allowing for the expiration of this Act.
  - b. Withdrawal from this compact must be by the enactment of a statute repealing the compact, except that in the case of this state, withdrawal from the compact may also be accomplished by statutorily allowing for the expiration of this Act.
  - c. The withdrawing state immediately shall notify the chairman of the commission in writing upon the introduction of legislation repealing this compact in the withdrawing state, except that if this state elects to withdraw from the compact by statutorily allowing for the expiration of this Act, this state shall notify the chairman of the commission when it becomes evident that the expiration will take effect. The commission shall notify the other member states of the withdrawing state's intent to withdraw within sixty days of receiving the notice.
  - d. The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, to a maximum amount equal to two dollars multiplied by the latest available number of children of military families in this state.
  - e. Reinstatement following withdrawal of a member state occurs upon the withdrawing state reenacting the compact or upon such later date as determined by the commission.
2. This compact dissolves effective upon the date of the withdrawal or default of the member state which reduces the membership in the compact to one member state. Upon the dissolution of this compact, the compact becomes null and void and is of no further force or effect, and the business and affairs of the commission must be concluded and surplus funds must be distributed in accordance with the bylaws.

#### **ARTICLE XVII - SEVERABILITY AND CONSTRUCTION**

1. The provisions of this compact are severable and if any phrase, clause, sentence, or provision is determined unenforceable, the remaining provisions of the compact are enforceable.
2. This compact must be liberally construed to effectuate its purposes.
3. Nothing in this compact prohibits the applicability of other interstate compacts to which the states are members.

**ARTICLE XVIII - BINDING EFFECT OF COMPACT AND OTHER LAWS**

1. Nothing in this compact prevents the enforcement of any other law of a member state that is not inconsistent with this compact. All member states' laws conflicting with this compact are superseded to the extent of the conflict.
2.
  - a. All lawful actions of the commission, including all rules and bylaws promulgated by the commission, are binding upon the member states.
  - b. All agreements between the commission and the member states are binding in accordance with their terms.
  - c. If any provision of this compact exceeds the constitutional limits imposed on the legislature of any member state, the provision is ineffective to the extent of the conflict with the constitutional provision in question in that member state.

**15.1-04.1-02. Compact on educational opportunity for military children - State council - Appointment.**

The state council on educational opportunity for military children consists of:

1. The following voting members:
  - a. The superintendent of public instruction, who shall serve as the chairman;
  - b. The superintendent of a school district that includes a high concentration of military children, appointed by the governor;
  - c. A representative of a military installation, appointed by the governor;
  - d. One legislator, appointed by the chairman of the legislative management;
  - e. One representative of the executive branch of government, appointed by the governor; and
  - f. Any other individuals recommended by the members of the state council listed in subdivisions a through e; and
2. The following nonvoting members:
  - a. The compact commissioner appointed under section 15.1-04.1-03; and
  - b. The military family education liaison, appointed under section 15.1-04.1-04.

**15.1-04.1-03. Compact commissioner - Appointment - Duties.**

The governor shall appoint a compact commissioner who shall be responsible for the administration and management of the state's participation in the compact on educational opportunity for military children.

**15.1-04.1-04. Military family education liaison - Appointment - Duties.**

The state council on educational opportunity for military children shall appoint a military family education liaison to assist military families and the state in facilitating the implementation of the compact on educational opportunity for military children.

<sup>50</sup> **SECTION 2. AMENDMENT.** Section 15.1-06-01 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-06-01. Schools free and accessible - School ages.**

1. Each public school must be free, open, and accessible at all times to any child provided:
  - a. The child may not enroll in grade one unless the child reaches the age of six before August first of the year of enrollment;
  - b. The child may not enroll in kindergarten unless the child reaches the age of five before August first of the year of enrollment; and
  - c. The child has not reached the age of twenty-one before August first of the year of enrollment.
2. Notwithstanding subsection 1, a school district may not enroll in grade one a child who is not six years old before August first, unless the child will be six years old before December first and:
  - a. The child, by means of developmental and readiness screening instruments approved by the superintendent of public instruction and administered by the school district, can demonstrate academic, social, and emotional readiness; or
  - b. The child has completed an approved kindergarten program.
3. Notwithstanding subsection 1, a school district may not enroll in kindergarten a child who is not five years old before August first unless the child will be five years old before December first and the child, by means of developmental and readiness screening instruments approved by the superintendent of public instruction and administered by the school district, can demonstrate academic, social, and emotional readiness.
4. The requirements of this section are not applicable to the children of military families, to the extent that the requirements conflict with enrollment provisions otherwise agreed to by the state in the compact on educational opportunity for military children.

<sup>51</sup> **SECTION 3. AMENDMENT.** Section 15.1-21-02.1 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>50</sup> Section 15.1-06-01 was also amended by section 1 of House Bill No. 1436, chapter 130.

<sup>51</sup> Section 15.1-21-02.1 was also amended by section 2 of Senate Bill No. 2317, chapter 137, and section 9 of Senate Bill No. 2150, chapter 147.

**15.1-21-02.1. High school graduation - Diploma requirements.**

Except as provided in section 15.1-21-02.3 or as otherwise agreed to in the compact on educational opportunity for military children, before a school district, a nonpublic high school, or the center for distance education issues a high school diploma to a student, the student must have successfully completed the following twenty-two units of high school coursework:

1. Four units of English language arts from a sequence that includes literature, composition, and speech;
2. Three units of mathematics;
3. Three units of science, including:
  - a. One unit of physical science;
  - b. One unit of biology; and
  - c. (1) One unit of any other science; or  
(2) Two one-half units of any other science;
4. 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. One unit of physical education; or
  - b. One-half unit of physical education and one-half unit of health;
6. Three units of:
  - a. Foreign languages;
  - b. Native American languages;
  - c. Fine arts; or
  - d. Career and technical education courses; and
7. Any five additional units.

**SECTION 4. AMENDMENT.** Subsection 1 of section 15.1-29-13 of the North Dakota Century Code is amended and reenacted as follows:

1. a. Except as provided in this subsection or as otherwise agreed to in the compact on educational opportunity for military children, the board of a school district that admits a nonresident student shall charge and collect tuition for the student. Either the student's district of residence shall pay the tuition to the admitting district in accordance with section 15.1-29-12 or the student's parent shall pay the tuition to the admitting district in accordance with section 15.1-29-07.
- b. A board may charge tuition for nonresident students enrolled in an approved alternative education program.
- c. Except as otherwise provided, if a school district fails to charge and collect tuition for a nonresident student, the districts shall forfeit any state aid otherwise payable for the nonresident student.

## **SECTION 5.**

### **Adjutant general - Provision of funding - Source.**

The adjutant general shall pay all expenses incurred by the state to participate in the compact on educational opportunity for military children, including the reimbursement of actual and necessary expenses incurred by members of the state council, from the operating expenses line item in the appropriation bill for the adjutant general, as approved by the legislative assembly.

**SECTION 6. REPORT TO LEGISLATIVE MANAGEMENT.** Before July 1, 2012, representatives of the Grand Forks school district, the Minot school district, the Grand Forks air force base school district, and the Minot air force base school district shall provide, singly or jointly, a report to the legislative management regarding the state's participation in the compact on educational opportunity for military children.

**SECTION 7. EXPIRATION DATE.** This Act is effective through July 31, 2013, and after that date is ineffective.

Approved May 17, 2011  
Filed May 17, 2011

## CHAPTER 130

### HOUSE BILL NO. 1436

(Representatives Hawken, Maragos, Delmore)  
(Senators Flakoll, J. Lee, Nelson)

AN ACT to amend and reenact sections 15.1-06-01 and 15.1-22-02 of the North Dakota Century Code, relating to enrollment in kindergarten.

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

<sup>52</sup> **SECTION 1. AMENDMENT.** Section 15.1-06-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **15.1-06-01. Schools free and accessible - School ages.**

1. Each public school must be free, open, and accessible at all times to any child provided:
  - a. The child may not enroll in grade one unless the child reaches the age of six before August first of the year of enrollment;
  - b. The child may not enroll in kindergarten unless the child reaches the age of five before August first of the year of enrollment; and
  - c. The child has not reached the age of twenty-one before August first of the year of enrollment.
2. Notwithstanding subsection 1, a school district may not enroll in grade one a child who is not six years old before August first, unless the child will be six years old before December first and:
  - a. The child, by means of developmental and readiness screening instruments approved by the superintendent of public instruction and administered by the school district, can demonstrate academic, social, and emotional readiness; or
  - b. The child has completed an approved kindergarten program.
3. Notwithstanding subsection 1, a school district may not enroll in kindergarten a child who is not five years old before August first unless the child will be five years old before December first and the child, by means of developmental and readiness screening instruments approved by the superintendent of public instruction and administered by the school district, can demonstrate superior academic; talents or abilities and social; and emotional readiness.

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<sup>52</sup> Section 15.1-06-01 was also amended by section 2 of House Bill No. 1248, chapter 129.



<sup>53</sup> **SECTION 2. AMENDMENT.** Section 15.1-22-02 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-22-02. Public kindergarten - Requirements.**

A school district operating a kindergarten:

1. May not employ an individual as a kindergarten teacher unless the individual is licensed to teach by the education standards and practices board or approved by the education standards and practices board.
2. Shall submit to the superintendent of public instruction and follow a developmentally appropriate curriculum.
3. Shall provide at least the equivalent of thirty full days of instruction, on a half-day or full-day basis, as determined by the school board.
4. Shall apply all municipal and state health, fire, and safety requirements to the kindergarten.
5. May not enroll a child who is not five years old before August first of the year of enrollment, unless the child will be five years old before December first and:
  - a. The child, by means of developmental and readiness screening instruments approved by the superintendent of public instruction and administered by the kindergarten operator, can demonstrate superior academic; talents or abilities and social; and emotional readiness; or
  - b. The child has been enrolled in another approved kindergarten.

Approved March 28, 2011

Filed March 28, 2011

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<sup>53</sup> Section 15.1-22-02 was also amended by section 19 of Senate Bill No. 2150, chapter 147.

## CHAPTER 131

### HOUSE BILL NO. 1029

(Legislative Management)  
(Education Committee)

AN ACT to create and enact sections 15.1-06-06.1, 15.1-06-06.2, and 15.1-06-06.3 of the North Dakota Century Code, relating to school approval; to amend and reenact sections 15.1-02-11, 15.1-06-06, 15.1-13-18, 15.1-13-19, and 15.1-13-25 of the North Dakota Century Code, relating to school approval; to repeal sections 15.1-27-08 and 15.1-27-09 of the North Dakota Century Code, relating to payment reductions for unaccredited schools; to provide an effective date; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 15.1-02-11 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-02-11. Superintendent of public instruction - Accreditation of schools - Rules.**

The superintendent of public instruction may adopt rules governing the accreditation of public and nonpublic schools. Any rule adopted under this section must incorporate measures of student achievement and bear a direct relationship to improving student achievement.

**SECTION 2. AMENDMENT.** Section 15.1-06-06 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-06-06. Approval of public and nonpublic schools.**

~~Each public and nonpublic school in this state offering elementary or secondary education to students must be approved by the superintendent of public instruction. Except as otherwise provided by law, the superintendent may not approve a school unless:~~

1. In order to obtain certification that a public school is approved, the superintendent of the district in which the school is located shall submit to the superintendent of public instruction a compliance report verifying that:
  - a. Each classroom teacher is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board;
  2. b. Each classroom teacher is teaching only in those course areas or fields for which the teacher is licensed or for which the teacher has received an exception under section 15.1-09-57;
  3. ~~The students are offered all subjects required by law;~~

- ~~4. The school is in compliance with all local and state health, fire, and safety laws; and~~
- ~~5. The school has conducted all criminal history record checks required by section 12-60-24.~~
  - c. The school meets all curricular requirements set forth in chapter 15.1-21;
  - d. The school participates in and meets the requirements of a review process that is:
    - (1) Designed to improve student achievement through a continuous cycle of improvement; and
    - (2) Approved by the superintendent of public instruction;
  - e. The school has been inspected by the state fire marshal or the state fire marshal's designee in accordance with section 15.1-06-09 and:
    - (1) Has no unremedied deficiency; or
    - (2) Has deficiencies that have been addressed in a plan of correction which was submitted to and approved by the state fire marshal or the state fire marshal's designee; and
  - f. All individuals hired after June 30, 2011, and having unsupervised contact with students at the school, have:
    - (1) Undergone a criminal history background check requested by the employing school district; or
    - (2) Undergone a criminal history background check in order to be licensed by the education standards and practices board or by any other state licensing board.
2. The compliance report required by subsection 1 must:
  - a. Be signed by the school principal and the superintendent of the school district;
  - b. Be formally approved by the board of the school district; and
  - c. Be filed with the superintendent of public instruction before five p.m. on the:
    - (1) First day of October; or
    - (2) The date of the extension provided under subsection 6.
3. On the tenth day of September and on the twenty-fifth day of September, the superintendent of public instruction shall provide to each school principal, school district superintendent, and school board member, electronic notification that the compliance report is due on the first day of October.
4. If a school's compliance report is not submitted at the time and in the manner required by subsection 2, the superintendent of public instruction shall

designate the school as unapproved. No later than thirty days after the date on which a school's compliance report is due, in accordance with subsection 2, the superintendent of public instruction shall post a notice on the department's website, indicating whether a school is approved or unapproved.

5. If a public school does not meet the approval requirements of this section, the superintendent of public instruction shall:
  - a. Notify the parents of students enrolled in the school, either directly or through the local media outlets, that the school is unapproved; and
  - b. Subtract from any state aid otherwise payable to the school district the prorated amount attributable to the students in attendance at the unapproved school for each day that the school's compliance report is not on file with the superintendent of public instruction.
6. If because of unforeseen or other extenuating circumstances a school district superintendent is unable to file a school's compliance report with the superintendent of public instruction before five p.m. on October first, the school district superintendent may request one extension from the superintendent of public instruction. The superintendent of public instruction shall grant the extension provided the request was received before five p.m. on October first. An extension under this section terminates at five p.m. on October fifteenth.
7. Upon receipt of a school's compliance report, as required by this section, the superintendent of public instruction shall certify the school as being approved. A certification of approval under this subsection expires at the conclusion of the regular school calendar.
8. If after being certified as approved a school experiences circumstances or events that would render the information contained in its compliance report inaccurate, the superintendent of the school district in which the school is located shall notify the superintendent of public instruction and work with the superintendent of public instruction to address the circumstances or events at the earliest possible time.
9. If a school district does not employ a superintendent, the duties required of a school district superintendent by this section must be performed as provided for in chapter 15.1-11.

**SECTION 3.** Section 15.1-06-06.1 of the North Dakota Century Code is created and enacted as follows:

**15.1-06-06.1. Approval of nonpublic schools.**

1. In order to obtain certification that a nonpublic school is approved, the administrator of a nonpublic school shall submit to the superintendent of public instruction a compliance report verifying that:
  - a. Each classroom teacher is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board;

- b. Each classroom teacher is teaching only in those course areas or fields for which the teacher is licensed or for which the teacher has received an exception under section 15.1-09-57;
  - c. The school meets all curricular requirements set forth in chapter 15.1-21;
  - d. The school has been inspected by the state fire marshal or the state fire marshal's designee in accordance with section 15.1-06-10 and:
    - (1) Has no unremedied deficiency; or
    - (2) Has deficiencies that have been addressed in a plan of correction which was submitted to and approved by the state fire marshal or the state fire marshal's designee; and
  - e. All individuals hired after June 30, 2011, and having unsupervised contact with students at the school, have:
    - (1) Undergone a criminal history background check requested on behalf of the employing school; or
    - (2) Undergone a criminal history background check in order to be licensed by the education standards and practices board or by any other state licensing board.
2. The compliance report required by subsection 1 must:
    - a. Be signed by the school administrator;
    - b. Be formally approved by the governing board of the school; and
    - c. Be filed with the superintendent of public instruction before five p.m. on:
      - (1) The first day of October; or
      - (2) The date of the extension provided under subsection 5.
  3. On the tenth day of September and on the twenty-fifth day of September, the superintendent of public instruction shall provide to each school administrator and member of the governing board, electronic notification that the compliance report is due on the first day of October.
  4. If a nonpublic school's compliance report is not submitted at the time and in the manner required by subsection 2, the superintendent of public instruction shall designate the school as unapproved. No later than thirty days after the date on which a school's compliance report is due, in accordance with subsection 2, the superintendent of public instruction shall post a notice on the department's website, indicating whether a nonpublic school is approved or unapproved.
  5. If a nonpublic school does not meet the approval requirements of this section, the superintendent of public instruction shall notify the parents of students enrolled in the school, either directly or through the local media outlets, that the school is unapproved and that the parents may be in violation of the state's compulsory attendance provisions.

6. If because of unforeseen or other extenuating circumstances the administrator of a nonpublic school is unable to file the school's compliance report with the superintendent of public instruction before five p.m. on October first, the school administrator may request one extension from the superintendent of public instruction. The superintendent of public instruction shall grant the extension provided the request was received before five p.m. on October first. An extension under this section terminates at five p.m. on October fifteenth.
7. Upon receipt of a nonpublic school's compliance report, as required by this section, the superintendent of public instruction shall certify the school as being approved. A certification of approval under this subsection expires at the conclusion of the regular school calendar.
8. If after being certified as approved a nonpublic school experiences circumstances or events that would render the information contained in its compliance report inaccurate, the administrator of the nonpublic school shall notify the superintendent of public instruction and work with the superintendent of public instruction to address the circumstances or events at the earliest possible time.

**SECTION 4.** Section 15.1-06-06.2 of the North Dakota Century Code is created and enacted as follows:

**15.1-06-06.2. Compliance report - Impossibility of timely submission.**

The superintendent of public instruction may delay imposing the sanctions set forth in section 15.1-06-06 in the case of a public school and may delay imposing the sanctions set forth in section 15.1-06-06.1 in the case of a nonpublic school, until a time certain, if:

1. The required submission of a school's compliance report is an impossibility due to:
  - a. A natural disaster or act of God, including fire, earthquake, or tornado;
  - b. An unauthorized or illegal act by a third party, including terrorism, sabotage, riot, or vandalism;
  - c. Death;
  - d. A medical or personal emergency;
  - e. Operational interruption, including electrical failure, and computer hardware or software failures; or
  - f. Governmental action, including an emergency order or judicial or law enforcement action; and
2. The superintendent of public instruction determines that the report, had it been submitted, would have demonstrated compliance with the approval requirements of section 15.1-06-06 in the case of a public school and compliance with the approval requirements of section 15.1-06-06.1 in the case of a nonpublic school.

**SECTION 5.** Section 15.1-06-06.3 of the North Dakota Century Code is created and enacted as follows:

### **15.1-06-06.3. Required records - Verification of information - Site visits.**

1. The superintendent of public instruction shall notify each school and school district of the records that must be maintained in order to allow the superintendent of public instruction to verify the information contained in each compliance report. The superintendent of public instruction shall establish the length of time that the records must be maintained.
2.
  - a. The superintendent of public instruction may examine the records of any public school at any time and may conduct site visits to ensure the accuracy of information provided on the compliance report. The site visits may be scheduled or unscheduled.
  - b. The superintendent of public instruction may examine the records of any nonpublic school upon request.

**SECTION 6. AMENDMENT.** Section 15.1-13-18 of the North Dakota Century Code is amended and reenacted as follows:

#### **15.1-13-18. Teaching license - Presentation to business manager.**

1. Before being employed to teach by a school district, an individual shall present to the school district business manager a teaching license or other evidence of approval to teach issued by the board.
2. Before being employed to teach by a nonpublic school, an individual shall present to the school business manager a teaching license or other evidence of approval to teach issued by the board.

**SECTION 7. AMENDMENT.** Section 15.1-13-19 of the North Dakota Century Code is amended and reenacted as follows:

#### **15.1-13-19. Teaching license - Expiration.**

Notwithstanding any other law, ~~an individual whose~~ an individual's teaching license expires within the final six weeks of a school year ~~may continue teaching under the expired license~~ district's or nonpublic school's calendar, that individual's license is deemed to be extended and in effect until the completion of the school ~~year~~ district's or nonpublic school's calendar.

**SECTION 8. AMENDMENT.** Section 15.1-13-25 of the North Dakota Century Code is amended and reenacted as follows:

#### **15.1-13-25. Teaching license - Action by board - Causes.**

1. After holding a public hearing in accordance with chapter 28-32, the board may issue a written warning or reprimand to the individual, suspend the individual's teaching license, or revoke the individual's teaching license if:
  - a. The individual obtained a license by means of fraud, misrepresentation, or concealment of facts.
  - b. The board becomes aware of any fact or circumstance that would have caused the board to deny licensure had the board known of the fact or circumstance at the time of initial licensure.

- c. The individual is incompetent, immoral, intemperate, or cruel.
  - d. The individual has been convicted of, has pled guilty to, or has pled nolo contendere to an offense deemed by the board to have a direct bearing upon an individual's ability to serve as a teacher or an administrator.
  - e. The board believes that the individual, having been convicted of an offense, has not been sufficiently rehabilitated under section 12.1-33-02.1.
  - f. The individual has refused to perform the duties of a teacher or an administrator.
  - g. The individual has breached a contract with a school district or nonpublic school.
  - h. The individual knowingly taught in violation of chapter 15.1-18.
  - i. The individual is an administrator in a school district ~~administrator or a nonpublic school~~ and knowingly permitted another individual to teach in violation of chapter 15.1-18.
  - j. The individual has violated this chapter or any rule adopted by the board.
2. Any action of the board taken under this section may be appealed to the district court of Burleigh County in accordance with chapter 28-32.

**SECTION 9. REPEAL.** Sections 15.1-27-08 and 15.1-27-09 of the North Dakota Century Code are repealed.

**SECTION 10. EFFECTIVE DATE.** This Act becomes effective on July 1, 2011.

**SECTION 11. EMERGENCY.** This Act is declared to be an emergency measure.

Approved May 9, 2011  
Filed May 10, 2011



## CHAPTER 132

### HOUSE BILL NO. 1215

(Representatives S. Kelsh, L. Meier, Guggisberg, Mock)  
(Senators Flakoll, Heckaman)

AN ACT to amend and reenact section 15.1-06-12 of the North Dakota Century Code, relating to a requirement for lockdown drills at schools.

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

**SECTION 1. AMENDMENT.** Section 15.1-06-12 of the North Dakota Century Code is amended and reenacted as follows:

#### **15.1-06-12. Emergency and disaster drills - Implementation.**

Each public and nonpublic school district superintendent shall implement conduct fire, tornado, and other emergency or disaster drills, including lockdown drills.

Approved April 4, 2011

Filed April 4, 2011

## CHAPTER 133

### SENATE BILL NO. 2278

(Senators Nething, Erbele, Wanzek)

AN ACT to create and enact a new section to chapter 15.1-07 of the North Dakota Century Code, relating to the disclosure of student names and addresses.

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

**SECTION 1.** A new section to chapter 15.1-07 of the North Dakota Century Code is created and enacted as follows:

#### **Student names and addresses - Authorized disclosure.**

Notwithstanding section 44-04-18.13, and subject to any limitations on the disclosure of directory information under title 20, Code of Federal Regulations, part 99, sections 31, 33, and 37, each high school shall provide to the North Dakota university system a list of all students enrolled in grades ten and eleven as of April fifteenth of each year, together with the students' addresses and telephone numbers. The North Dakota university system shall disclose this information to each institution under the control of the state board of higher education and to each nonpublic university and college in this state.

Approved April 19, 2011

Filed April 19, 2011

## CHAPTER 134

### HOUSE BILL NO. 1326

(Representatives Rust, Sanford)  
(Senator Heckaman)

AN ACT to amend and reenact section 15.1-09-59 of the North Dakota Century Code, relating to the maintenance of insurance by school districts.

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

**SECTION 1. AMENDMENT.** Section 15.1-09-59 of the North Dakota Century Code is amended and reenacted as follows:

#### **15.1-09-59. Maintenance of insurance - Report to superintendent of public instruction.**

1. ~~During the 2009-10 school year and at~~ At least once every eight~~six~~ years thereafter, each school district shall ~~obtain an appraisal of its buildings and its facilities, and an inventory of their contents~~work with its commercial property insurance carrier for the purpose of ensuring that:
  - a. All school district buildings and facilities are properly identified and accurately valued; and
  - b. The contents of all school district buildings and facilities are properly inventoried and accurately valued.
2. a. If a school district can demonstrate to the satisfaction of the superintendent of public instruction that the district completed the requirements of subsection 1 during the period beginning July 1, 2006, and ending June 30, 2011, the district's six-year requirement for identification and valuation begins on the date that the requirements were met.
  - b. If a school district cannot demonstrate to the satisfaction of the superintendent of public instruction that the district completed the requirements of subsection 1 during the period beginning July 1, 2006, and ending June 30, 2011, the district shall complete the requirements during the 2011-12 school year.
3. Annually, each school district shall review the terms of any insurance policies providing coverage for its buildings, its facilities, and their contents and ensure that there are in place the policies are sufficient to provide in full for the repair or replacement of the buildings, its facilities, and their contents, in the event of a loss.
- ~~3.4.~~ Annually, the superintendent of public instruction shall verify that each school district is in compliance with the requirements of this section.

Approved March 14, 2011  
Filed March 14, 2011

## CHAPTER 135

### HOUSE BILL NO. 1270

(Representatives Hawken, R. Kelsch, Mueller)  
(Senators Fischer, Freborg, Heckaman)

AN ACT to amend and reenact sections 15.1-13-09 and 15.1-13-20 of the North Dakota Century Code, relating to the licensing of teachers from other states; and to repeal section 15.1-13-21 of the North Dakota Century Code, relating to reciprocal teaching licenses.

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

**SECTION 1. AMENDMENT.** Section 15.1-13-09 of the North Dakota Century Code is amended and reenacted as follows:

##### **15.1-13-09. Board powers.**

The board may:

1. Adopt rules in accordance with chapter 28-32.
2. ~~Contract with other states for the reciprocal approval of teacher preparation programs.~~
3. Apply for and receive federal or other funds on behalf of the state for purposes related to its duties.
- 4.3. Perform any duty related to the improvement of instruction through teacher education, professional development, and continuing education programs.

**SECTION 2. AMENDMENT.** Section 15.1-13-20 of the North Dakota Century Code is amended and reenacted as follows:

##### **15.1-13-20. Interim reciprocal teaching license – Period of validity Applicants licensed in other states.**

1. The board shall grant ~~an interim reciprocal~~ teaching license ~~in accordance with sections 15.1-18-02 and 15.1-18-03 to an individual~~ to an applicant who holds a regular teaching license or certificate from another state, provided:
  - a. The ~~individual's~~ applicant's licensure or certification is based upon a minimum of a bachelor's degree with a major that meets the issuing state's requirements in early childhood education, elementary education, middle level education, or a content area taught at a public high school;
  - b. The ~~individual's~~ applicant's licensure or certification is based upon the completion of a professional education sequence from a state-approved teacher education program and includes supervised student teaching;
  - c. The ~~individual~~ applicant submits ~~to the required fee and~~ a criminal history record check, as required of initial applicants by this chapter; and

- d. ~~The criminal history record check reveals nothing for which a North Dakota applicant would be denied initial licensure; and.~~
  - e. ~~The individual submits a plan for meeting all requirements necessary to become a licensed teacher in this state.~~
2. ~~An interim reciprocal license granted under this section is valid for two years.~~
  3. ~~The individual shall submit evidence of progress on the plan required by subsection 1 to the board prior to renewal of the interim reciprocal license.~~
  4. ~~The board may renew the interim reciprocal license for one additional two year period if the board finds that the individual has demonstrated satisfactory progress.~~
  5. ~~Notwithstanding any other law, an interim reciprocal license granted under this section is the equivalent of a teaching license granted under this chapter.~~
2.
    - a. A license granted under this section is valid for two years if the applicant has not been licensed in another state for at least eighteen months.
    - b. Notwithstanding subdivision a, if the individual received a teaching license or certificate from another state on or after January 1, 2002, and if the issuing state did not require that the individual pass a state test as a condition of licensure or certification, the board shall require that the individual, within two years from the date of licensure, pass all state licensure tests normally required of applicants from this state.
    - c. In all other cases, a license granted under this section is valid for five years and is renewable if the licenseholder meets the reeducation requirements established for all five-year license renewals.

**SECTION 3. REPEAL.** Section 15.1-13-21 of the North Dakota Century Code is repealed.

Approved April 26, 2011  
Filed April 26, 2011

## CHAPTER 136

### HOUSE BILL NO. 1094

(Government and Veterans Affairs Committee)  
(At the request of the Superintendent of Public Instruction)

AN ACT to amend and reenact subsection 1 of section 15.1-13-33 of the North Dakota Century Code, relating to investment of special funds in the state treasury for the purpose of funding grants for teachers to pursue national board certification.

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

<sup>54</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 15.1-13-33 of the North Dakota Century Code is amended and reenacted as follows:

1. The national board certification fund is a special fund in the state treasury. The state ~~investment board~~treasurer shall invest the fund in accordance with ~~chapter 21-10~~the prudent investor rule. All interest and income received on investments are appropriated on a continuing basis to the superintendent of public instruction for the purpose of allowing the education standards and practices board to award grants to teachers pursuing national board certification.

Approved April 27, 2011  
Filed April 27, 2011

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<sup>54</sup> Section 15.1-13-33 was repealed by section 23 of Senate Bill No. 2013, chapter 39.

## CHAPTER 137

### SENATE BILL NO. 2317

(Senators Wardner, Kilzer, Mathern)  
(Representatives Hawken, L. Meier, Nathe)

AN ACT to create and enact a new section to chapter 15.1-13 of the North Dakota Century Code, relating to the approval of theological studies instructors; and to amend and reenact section 15.1-21-02.1 of the North Dakota Century Code, relating to theological studies courses.

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

**SECTION 1.** A new section to chapter 15.1-13 of the North Dakota Century Code is created and enacted as follows:

##### **Approval of theological studies instructors.**

The board shall approve an individual to be an instructor of theological studies upon receipt of the application and fees required under section 15.1-13-11 and pending completion of the background check required by section 15.1-13-14, if the individual:

1. Holds a baccalaureate degree; and
2. Is recommended for approval as an instructor of theological studies by the governing board of a nonpublic school offering a theological studies course.

<sup>55</sup> **SECTION 2. AMENDMENT.** Section 15.1-21-02.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **15.1-21-02.1. High school graduation - Diploma requirements.**

Except as provided in section 15.1-21-02.3, before a school district, a nonpublic high school, or the center for distance education issues a high school diploma to a student, the student must have successfully completed the following twenty-two units of high school coursework:

1. Four units of English language arts from a sequence that includes literature, composition, and speech;
2. Three units of mathematics;
3. Three units of science, including:
  - a. One unit of physical science;
  - b. One unit of biology; and

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<sup>55</sup> Section 15.1-21-02.1 was also amended by section 3 of House Bill No. 1248, chapter 129, and section 9 of Senate Bill No. 2150, chapter 147.

- c. (1) One unit of any other science; or  
(2) Two one-half units of any other science;
4. 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. One unit of physical education; or  
b. One-half unit of physical education and one-half unit of health;
6. Three units of:
  - a. Foreign languages;
  - b. Native American languages;
  - c. Fine arts; or
  - d. Career and technical education courses; and
7. Any five additional units, two of which may be theological studies if taught in a nonpublic school by an approved theological studies instructor.

Approved April 26, 2011

Filed April 26, 2011



## CHAPTER 138

### SENATE BILL NO. 2179

(Senator Wardner)  
(Representative N. Johnson)

AN ACT to amend and reenact section 15.1-16-03 of the North Dakota Century Code, relating to a per diem increase for members of the North Dakota education factfinding commission.

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

**SECTION 1. AMENDMENT.** Section 15.1-16-03 of the North Dakota Century Code is amended and reenacted as follows:

#### **15.1-16-03. Education factfinding commission - Compensation.**

Each member of the commission is entitled to receive compensation at the rate of ~~ninetyone hundred ten~~ ninetyone hundred ten dollars per day and reimbursement for expenses, as provided by law for state officers, for attending commission meetings or performing duties directed by the commission.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 139

### SENATE BILL NO. 2281

(Senators Berry, Flakoll, Schneider)  
(Representatives R. Kelsch, Grande, Porter)

AN ACT to create and enact a new section to chapter 15.1-18.2 of the North Dakota Century Code, relating to concussion management program requirements; 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 15.1-18.2 of the North Dakota Century Code is created and enacted as follows:

#### **Student athletics - Concussion management program - Requirements.**

1. Each school district and nonpublic school that sponsors or sanctions any athletic activity in this state and requires a participating student to regularly practice or train, and compete, is subject to the terms of a concussion management program.
2. The concussion management program must set forth in clear and readily comprehensible language the signs and symptoms of a concussion.
3. The concussion management program must require that an official remove a student from competition and that a student's coach or a student's athletic trainer remove the student from practice, training, or competition if:
  - a. The student reports any sign or symptom of a concussion, as set forth in accordance with this section;
  - b. The official, coach, or athletic trainer determines that the student exhibits any sign or symptom of a concussion, as set forth in accordance with this section; or
  - c. The official, coach, or athletic trainer is notified that the student has reported or exhibited any sign or symptom of a concussion by a licensed, registered, or certified health care provider whose scope of practice includes the recognition of concussion signs and symptoms.
4. The concussion management program must require that any student who is removed in accordance with subsection 3 must be examined as soon as practicable by a licensed, registered, or certified health care provider whose scope of practice includes the diagnosis and treatment of concussion.
5. A student who is removed in accordance with subsection 3 may not be allowed to return to practice, training, or competition until the student or the student's parent obtains written authorization from a licensed, registered, or certified health care provider whose scope of practice includes the diagnosis and treatment of concussion and provides that authorization to the student's coach or athletic trainer.

6. The concussion management program must require that each official, coach, and athletic trainer receive biennial training regarding the nature and risk of concussion.
7. The student's school district or nonpublic school shall ensure that before a student is allowed to participate in the athletic activity described in subsection 1, the student and the student's parent shall document that they have viewed information regarding concussions incurred by students participating in athletic activities. The required information must be provided by the student's school district or nonpublic school and must be made available in printed form or in a verifiable electronic format.
8. This section does not create any liability for, or create a cause of action against:
  - a. A school district, its officers, or its employees; or
  - b. A nonpublic school, its officers, or its employees.
9. A school district or a nonpublic school may contract for and accept gifts, grants, and donations from any public or nonpublic source, in order to meet the requirements of this section.
10. For the purposes of this section, "official" means an umpire, a referee, a judge, or any other individual formally officiating at an athletic event.

**SECTION 2. CONCUSSION MANAGEMENT PROGRAMS - LEGISLATIVE MANAGEMENT STUDY.** During the 2011-12 biennium, the legislative management shall study concussion management with respect to youth athletics, including the nature, scope, and applicability of programs designed to prevent or eliminate concussions. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

Approved April 22, 2011  
Filed April 25, 2011

## CHAPTER 140

### HOUSE BILL NO. 1086

(Judiciary Committee)  
(At the request of the Supreme Court)

AN ACT to amend and reenact section 15.1-19-13 of the North Dakota Century Code, relating to notifications regarding student use of alcohol or controlled substances.

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

**SECTION 1. AMENDMENT.** Section 15.1-19-13 of the North Dakota Century Code is amended and reenacted as follows:

#### **15.1-19-13. Alcohol or controlled substance - Use or possession by student - Notification of principal - Exception.**

If a teacher knows or has reason to believe that a student is using, is in possession of, or is delivering alcohol or a controlled substance while the student is on school property, involved in a school-related activity, or in attendance at a school-sponsored event, the teacher shall notify the student's principal. The notification requirement in this section does not apply to a teacher or administrator who participates in a juvenile drug court program and receives confidential information regarding a student as a result of participation in the program. This section does not prevent a teacher or any other school employee from reporting to a law enforcement agency any violation of law occurring on school property, at a school-related activity, or at a school-sponsored event.

Approved May 9, 2011  
Filed May 10, 2011

## CHAPTER 141

### HOUSE BILL NO. 1465

(Representatives R. Kelsch, Vigesaa, Gruchalla)  
(Senators Flakoll, Wardner, Warner)

AN ACT to create and enact six new sections to chapter 15.1-19 of the North Dakota Century Code, relating to the prevention of bullying in public schools.

#### 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:

#### **Bullying - Definition.**

As used in this Act:

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.

2. "Conduct" includes the use of technology or other electronic media.

**SECTION 2.** A new section to chapter 15.1-19 of the North Dakota Century Code is created and enacted as follows:

**Bullying - Prohibition by policy.**

1. Before July 1, 2012, 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 1 of this Act;
  - 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 a reasonable suspicion that a crime might have occurred;
  - 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.

**SECTION 3.** A new section to chapter 15.1-19 of the North Dakota Century Code is created and enacted as follows:

**Professional development activities.**

Each school district shall include, in professional development activities, information regarding the prevention of bullying and shall provide information regarding the prevention of bullying to all volunteers and nonlicensed personnel who have contact with students.

**SECTION 4.** A new section to chapter 15.1-19 of the North Dakota Century Code is created and enacted as follows:

**Bullying prevention programs.**

Each school district shall provide bullying prevention programs to all students from kindergarten through grade twelve.

**SECTION 5.** A new section to chapter 15.1-19 of the North Dakota Century Code is created and enacted as follows:

**Causes of action - Immunity - School districts.**

1. This Act does not prevent a victim from seeking redress pursuant to any other applicable civil or criminal law. This Act does not create or alter any civil cause of action for monetary damages against any person or school district, nor does this Act constitute grounds for any claim or motion raised by either the state or a defendant in any proceedings.
2. Any individual who promptly, reasonably, and in good faith reports an incident of bullying, reprisal, or retaliation to the school district employee or official designated in the school district bullying policy is immune from civil or criminal liability resulting from or relating to the report or to the individual's participation in any administrative or judicial proceeding stemming from the report.
3. A school district and its employees are immune from any liability that might otherwise be incurred as a result of a student having been the recipient of bullying, if the school district implemented a bullying policy, as required by section 2 of this Act and substantially complied with that policy.

**SECTION 6.** A new section to chapter 15.1-19 of the North Dakota Century Code is created and enacted as follows:

**Causes of action - Immunity - Nonpublic schools.**

1. This Act does not prevent a victim from seeking redress pursuant to any other applicable civil or criminal law. This Act does not create or alter any civil cause of action for monetary damages against any person or nonpublic school, nor does this Act constitute grounds for any claim or motion raised by either the state or a defendant in any proceedings.
2. Any individual who promptly, reasonably, and in good faith reports an incident of bullying, reprisal, or retaliation to the nonpublic school employee or official designated in the school's bullying policy is immune from civil or criminal liability resulting from or relating to the report or to the individual's participation in any administrative or judicial proceeding stemming from the report.
3. A nonpublic school and its employees are immune from any liability that might otherwise be incurred as a result of a student having been the recipient of bullying, if the school implemented a bullying policy, similar to that required by section 2 of this Act and substantially complied with that policy.

Approved April 22, 2011  
Filed April 25, 2011



## CHAPTER 142

### SENATE BILL NO. 2226

(Senators Cook, Freborg)  
(Representatives R. Kelsch, J. Kelsh, Wall)

AN ACT to create and enact sections 15.1-20-02.1, 15.1-20-03.1, and 15.1-20-03.2 of the North Dakota Century Code, relating to compulsory attendance at school; and to amend and reenact section 15.1-20-03 of the North Dakota Century Code, relating to compulsory attendance.

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

**SECTION 1.** Section 15.1-20-02.1 of the North Dakota Century Code is created and enacted as follows:

##### **15.1-20-02.1. Attendance - Determination - Policies.**

1. To be deemed in attendance for purposes of this chapter, a student may not be absent from school without excuse for more than:
  - a. Three consecutive school days during either the first half or the second half of a school or school district's calendar;
  - b. Six half days during either the first half or the second half of a school or school district's calendar; or
  - c. Twenty-one class periods.
2. The board of each school district and governing body of each nonpublic school shall adopt a policy that:
  - a. Defines an excused absence as any absence from school, if that absence is supported by either a verbal or written excuse supplied by the student's parent, teacher, or school administrator; and
  - b. Articulates the type of documentation that may be requested to verify a student's absence.
3. This chapter does not preclude a school district or nonpublic school from withholding credit, removing a student from a course, or taking other punitive measures against a student who does not arrive in a timely fashion or who exceeds a specific number of absences, as determined by the school district or nonpublic school.

**SECTION 2. AMENDMENT.** Section 15.1-20-03 of the North Dakota Century Code is amended and reenacted as follows:

##### **15.1-20-03. Compulsory attendance law - Enforcement - Penalty.**

1. Each teacher and administrator is charged with the enforcement of compulsory ~~school~~ attendance provisions. The compulsory ~~school~~ attendance

provisions are applicable to any childstudent who is offered school facilities by a school district, regardless of whether or not the childstudent actually resides in the district.

2. If a teacher determines that a childstudent is not in attendance as required by this chapter and that the childstudent has not been excused in accordance with this chapter or in accordance with the ~~school's~~ or school district's or nonpublic school's policies, the teacher shall notify the administrator of the school.
3. Upon receiving notice of a childstudent's absence under subsection 2, the administrator shall initiate an investigation into the cause of the absence. If the administrator has reason to believe that the person having responsibility for the childstudent has failed to ensure that the childstudent is in attendance, the administrator shall refer the matter to the local law enforcement agency.
4. Any person who fails to ensure that a childstudent is in attendance as required by this chapter is guilty of an infraction for a first offense and is guilty of a class B misdemeanor for a second or subsequent offense.
5. In a prosecution for an offense under this section, it is an affirmative defense if the person responsible for ensuring that the childstudent is in attendance has made substantial and reasonable efforts to comply with the requirements of this section, but is unable to compel the childstudent to attend school. If the court determines that the affirmative defense is valid, the court shall dismiss the complaint against the person.

**SECTION 3.** Section 15.1-20-03.1 of the North Dakota Century Code is created and enacted as follows:

**15.1-20-03.1. Submission of data.**

Each school district and nonpublic school shall submit data regarding school attendance and the application of this chapter to the superintendent of public instruction at the time and in the manner directed by the superintendent.

**SECTION 4.** Section 15.1-20-03.2 of the North Dakota Century Code is created and enacted as follows:

**15.1-20-03.2. Truancy prevention and intervention programs - Resources.**

The superintendent of public instruction shall disseminate to school districts and nonpublic schools information regarding truancy prevention and intervention programs and research pertaining to best practices in truancy prevention efforts.

Approved April 20, 2011  
Filed April 20, 2011

## CHAPTER 143

### HOUSE BILL NO. 1154

(Representatives Grande, Dahl, Dosch)  
(Senators Grindberg, Holmberg, Robinson)

AN ACT to amend and reenact section 15.1-21-02.6 of the North Dakota Century Code, relating to eligibility for North Dakota scholarships.

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

<sup>56</sup> **SECTION 1. 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. 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 institution of higher education in this state and maintains a cumulative grade point average of 2.75.
2. A student is not entitled to receive more than six thousand dollars under this section.
3. The state board of higher education shall forward the scholarship directly to the institution in which the student is enrolled.
4. This section does not require a student to be enrolled in consecutive semesters. However, a scholarship under this section is valid only for six academic years after the student's graduation from high school and may not be applied to graduate programs.
5. 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 graduates from a:
  - a. A high school in this state ~~or from a~~
  - b. A high school in a bordering state under chapter 15.1-29; or
  - c. A nonpublic high school in a bordering state while residing with a custodial parent in this state.

Approved April 26, 2011  
Filed April 26, 2011

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<sup>56</sup> Section 15.1-21-02.6 was also amended by section 13 of Senate Bill No. 2150, chapter 147.

## CHAPTER 144

### HOUSE BILL NO. 1273

(Representatives Koppelman, L. Meier, Sanford, Wall)  
(Senators J. Lee, Heckaman)

AN ACT to create and enact a new section to chapter 15.1-21 of the North Dakota Century Code, relating to readiness testing and formative assessments of kindergarten students.

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

**SECTION 1.** A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

#### **Readiness testing and formative assessments - Kindergarten students - School calendar.**

1. A school district may conduct readiness testing and formative assessments of incoming kindergarten students. The dates on which the testing and assessments are scheduled may be within the regular school calendar or before the regular school calendar. The school district shall provide to the parents of each incoming kindergarten student the date and time of the student's testing or assessment.
2. A district may consider up to two of the days set aside for readiness testing and formative assessments to be kindergarten instructional days for purposes of section 15.1-06-04. However, the attendance of a kindergarten student on those days is limited to the period of time during which the individual student's testing or assessment is scheduled.

Approved March 28, 2011

Filed March 28, 2011

## CHAPTER 145

### HOUSE BILL NO. 1229

(Representatives Grande, Rohr, Schatz, Hunsakor)  
(Senators Luick, O'Connell)

AN ACT to create and enact a new section to chapter 15.1-21 of the North Dakota Century Code, relating to health curriculum content.

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

**SECTION 1.** A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

#### **Health curriculum - Content.**

Beginning July 1, 2012, each school district and nonpublic school shall ensure that the portion of its health curriculum which is related to sexual health includes instruction pertaining to the risks associated with adolescent sexual activity and the social, psychological, and physical health gains to be realized by abstaining from sexual activity before and outside of marriage.

Approved May 9, 2011  
Filed May 10, 2011

## CHAPTER 146

### HOUSE BILL NO. 1211

(Representatives Damschen, Grande, Ruby)  
(Senator Sitte)

AN ACT to amend and reenact sections 15.1-23-01, 15.1-23-02, 15.1-23-03, 15.1-23-06, 15.1-23-08, and 15.1-23-17 of the North Dakota Century Code, relating to 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. ~~(Effective through July 31, 2011)~~ Home education - Definition.**

For purposes of this chapter, "home education" means a program of education supervised by a child's parent in accordance with the requirements of this chapter.

~~(Effective after July 31, 2011) Home education -- Definition. For purposes of this chapter, "home education" means a program of education supervised by a child's parent, in the child's home, in accordance with the requirements of this chapter.~~

**SECTION 2. AMENDMENT.** Section 15.1-23-02 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-23-02. Statement of intent to supervise home education.**

At least fourteen days before beginning home education or within fourteen days of establishing a child's residence in a school district, and once each year thereafter, a parent intending to supervise or supervising home education shall file a statement, reflecting that intent or fact, with the superintendent of the child's school district of residence or if no superintendent is employed, with the county superintendent of schools for the child's county of residence.

1. The statement must include:
  - a. The name and address of the child receiving home education;
  - b. The child's date of birth;
  - c. The child's grade level;
  - d. The name and address of the parent who will supervise the home education;
  - e. The qualifications of the parent who will supervise the home education;
  - f. Any public school courses in which the child intends to participate and the school district offering the courses; and

- g. Any extracurricular activities in which the child intends to participate and the school district or approved nonpublic school offering the activities.
2. The statement must be accompanied by a copy of the child's immunization record and proof of the child's identity as required by section 54-23.2-04.2.
3. The superintendent of the child's school district of residence or if no superintendent is employed, the county superintendent of schools for the child's county of residence shall report the number of statements of intent that have been filed in accordance with this section to the superintendent of public instruction at the time and in the manner required by the superintendent of public instruction.

**SECTION 3. AMENDMENT.** Section 15.1-23-03 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-23-03. ~~(Effective through July 31, 2011)~~ Home education - Parental qualifications.**

A parent may supervise home education if the parent:

1. Holds a high school diploma or a general educational development diploma; or
2. Meets the requirements of section 15.1-23-06.

~~(Effective after July 31, 2011) Home education - Parental qualifications. A parent may supervise home education if the parent:~~

- ~~1. Is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board;~~
- ~~2. Holds a baccalaureate degree;~~
- ~~3. Has met or exceeded the cutoff score of a national teacher examination given in this state or in any other state if this state does not offer such a test; or~~
- ~~4. Meets the requirements of section 15.1-23-06.~~

**SECTION 4. AMENDMENT.** Section 15.1-23-06 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-23-06. ~~(Effective through July 31, 2011)~~ Home education - Required monitoring of progress.**

A parent who does not meet the qualifications provided in section 15.1-23-03 may supervise home education but must be monitored in accordance with section 15.1-23-07 for the first two years. If a child receiving home education obtains a basic composite standardized achievement test score below the fiftieth percentile nationally, the parent must be monitored for at least one additional school year and until the child receives a test score at or above the fiftieth percentile. If testing is not required by section 15.1-23-07 during the first two years of monitoring, the period of monitoring may not be extended, except upon the mutual consent of the parent and the monitor. If a parent completes the monitoring requirements of this section for one child, the parent may not be monitored with respect to other children for whom the parent supervises home education.

~~(Effective after July 31, 2011) Home education – Required monitoring of progress.~~ A parent who has a high school diploma or a general education development certificate may supervise home education but must be monitored in accordance with section 15.1-23-07 for the first two years. If a child receiving home education obtains a basic composite standardized achievement test score below the fiftieth percentile nationally, the parent must be monitored for at least one additional school year and until the child receives a test score at or above the fiftieth percentile. If testing is not required by section 15.1-23-07 during the first two years of monitoring, the period of monitoring may not be extended, except upon the mutual consent of the parent and the monitor. If a parent completes the monitoring requirements of this section for one child, the parent may not be monitored with respect to other children for whom the parent supervises home education.

**SECTION 5. AMENDMENT.** Section 15.1-23-08 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-23-08. (Effective through July 31, 2014) Test administration.**

An individual who in accordance with this chapter administers a standardized achievement test to a child receiving home education shall notify the child's school district of residence.

~~(Effective after July 31, 2011) Monitoring or test administration.~~ An individual who in accordance with this chapter monitors a child receiving home education or who administers a standardized achievement test to a child receiving home education shall notify the child's school district of residence.

**SECTION 6. AMENDMENT.** Section 15.1-23-17 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-23-17. (Effective through July 31, 2014) Home education - High school diplomas.**

1. A child's school district of residence, an approved nonpublic high school, or the center for distance education may issue a high school diploma to a child who, through home education, has met the issuing entity's requirements for high school graduation provided the child's parent submits to the issuing entity a description of the course material covered in each high school subject, a description of the course objectives and how the objectives were met, and a transcript of the child's performance in grades nine through twelve.
2. In the alternative, a high school diploma may be issued by the child's school district of residence, an approved nonpublic high school, or the center for distance education provided the child, through home education, has completed at least ~~twenty-one~~twenty-two units of high school coursework from the minimum required curriculum offerings established by law for public and nonpublic schools and the child's parent or legal guardian submits to the issuing entity a description of the course material covered in each high school subject, a description of the course objectives and how the objectives were met, and a transcript of the child's performance in grades nine through twelve. The issuing entity may indicate on a diploma issued under this subsection that the child was provided with home education. ~~Beginning with the 2009-10 school year, the number of units required by this section increases to twenty-two and beginning with the 2011-12 school year, the number of units required by this section increases to twenty-four. Beginning with the 2010-11~~



~~school year, the number of units required by this section increases to twenty-two.~~

3. If for any reason the documentation required in subsection 1 or 2 is unavailable, the entity issuing the diploma may accept any other reasonable proof that the child has met the applicable requirements for high school graduation.

**(Effective after July 31, 2011) Home education – High school diplomas.**

1. ~~A child's school district of residence, an approved nonpublic high school, or the center for distance education may issue a high school diploma to a child who, through home education, has met the issuing entity's requirements for high school graduation provided the child's parent submits to the issuing entity a description of the course material covered in each high school subject, a description of the course objectives and how the objectives were met, and a transcript of the child's performance in grades nine through twelve.~~
2. ~~In the alternative, a high school diploma may be issued by the child's school district of residence, an approved nonpublic high school, or the center for distance education provided the child, through home education, has completed at least twenty-one units of high school coursework from the minimum required curriculum offerings established by law for public and nonpublic schools and the child's parent or legal guardian submits to the issuing entity a description of the course material covered in each high school subject, a description of the course objectives and how the objectives were met, and a transcript of the child's performance in grades nine through twelve. The issuing entity may indicate on a diploma issued under this subsection that the child was provided with home education. Beginning with the 2010-11 school year, the number of units required by this section increases to twenty-two.~~
3. ~~If for any reason the documentation required in subsection 1 or 2 is unavailable, the entity issuing the diploma may accept any other reasonable proof that the child has met the applicable requirements for high school graduation.~~

Approved April 4, 2011

Filed April 4, 2011

## CHAPTER 147

### SENATE BILL NO. 2150

(Senators Flakoll, Holmberg, O'Connell)  
(Representatives R. Kelsch, Hawken, Delmore)

AN ACT to create and enact a new section to chapter 6-09, a new section to chapter 15.1-09.1, four new sections to chapter 15.1-18.2, two new sections to chapter 15.1-21, and a new section to chapter 15.1-27 of the North Dakota Century Code, relating to required transfers, regional education associations, the professional development advisory committee, North Dakota scholarships, and state aid; to amend and reenact sections 15.1-07-33, 15.1-09.1-02, 15.1-21-02.1, 15.1-21-02.4, 15.1-21-02.5, 15.1-21-02.6, 15.1-21-08, 15.1-21-18, 15.1-21-19, 15.1-22-01, 15.1-22-02, 15.1-27-03, 15.1-27-03.1, 15.1-27-04, 15.1-27-07.2, 15.1-27-11, 15.1-27-23, 15.1-27-35.3, 15.1-36-02, and 15.1-37-01, subsection 1 of section 15.1-37-02, and section 15.1-37-03 of the North Dakota Century Code, relating to technology, regional education associations, curriculum requirements, assessments, scholarships, kindergartens, student consultations, state aid, school construction funding, and early childhood education, care, and services; to repeal section 5 of this Act and sections 15.1-18.2-01, 15.1-18.2-02, 15.1-18.2-03, and 15.1-27-15 of the North Dakota Century Code, relating to professional development and isolated schools; to provide an appropriation; to provide for compensation increases, transition payments, and the distribution of transportation grants, alternative middle school grants, and rapid enrollment growth grants; to provide for legislative management studies and reports; 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>57</sup> **SECTION 1.** A new section to chapter 6-09 of the North Dakota Century Code is created and enacted as follows:

##### **Required transfer - Special education contract costs.**

If the industrial commission is notified by the superintendent of public instruction that, using all available sources, there are insufficient moneys with which to fully reimburse school districts for the excess costs of serving the one percent of special education students statewide who require the greatest school district expenditures in order to be provided with special education and related services, the industrial commission shall transfer from the earnings and accumulated and undivided profits of the Bank of North Dakota the amount that the superintendent of public instruction certifies is necessary to provide the statutorily required level of reimbursement. The superintendent of public instruction shall file for introduction legislation requesting that the ensuing legislative assembly return any amount transferred under this section to the Bank of North Dakota.

**SECTION 2. AMENDMENT.** Section 15.1-07-33 of the North Dakota Century Code is amended and reenacted as follows:

<sup>57</sup> Section 6-09-44 was also created by section 1 of Senate Bill No. 2078, chapter 79.

**15.1-07-33. Student information system - Statewide coordination - Financial support - 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 the information technology department and use it as its principal student information system.
2. The superintendent of public instruction shall forward that portion of a school district's state aid which is payable by the superintendent under subdivision n of subsection 1 of section 15.1-27-03.1 directly to the information technology department to reimburse the department for the cost of the school district's acquisition, implementation, or utilization of PowerSchool and any related technology support services. The superintendent shall forward the amount payable under this subsection at the same time and in the same manner as provided for other state aid payments under section 15.1-27-01.
3. If the portion of a school district's state aid forwarded to the information technology department under subsection 2 exceeds the cost incurred by the information technology department in providing for the school district's acquisition, implementation, or utilization of PowerSchool and any related technology support services, the information technology department shall return the excess moneys to the superintendent of public instruction for redistribution to the school district as per student payments.
4. The superintendent of public instruction may exempt a school district from having to acquire and utilize PowerSchool if the school district demonstrates that, 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.

**SECTION 3. AMENDMENT.** Section 15.1-09.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-09.1-02. Regional education association ~~Joint powers agreement~~ associations - Review by superintendent of public instruction - Criteria.**

~~Before~~In order for a group of school districts ~~may~~to be designated as a regional education association, the superintendent of public instruction shall review the joint powers agreement that the districts have entered and verify that: the requirements of this section have been met.

1. The school districts must:
  - a. Have a combined total land mass of at least five thousand eight hundred square miles [1502193 hectares];
  - b. (1) Have a combined total land mass of at least four thousand five hundred square miles [1165494 hectares]; and
    - (2) Number at least twelve;
  - c. (1) Have a combined total land mass of at least four thousand square miles [1035995 hectares]; and

- (2) Have at least three thousand students in average daily membership; or
  - d. (1) Have a combined total land mass of at least one thousand five hundred square miles [388498 hectares]; and
  - (2) Have at least seven thousand five hundred students in average daily membership.
2. The school districts ~~are~~must be contiguous to each other or, if the districts are not contiguous to each other, the superintendent of public instruction shall verify that the participating districts can provide sound educational opportunities to their students in a fiscally responsible manner without injuring other school districts or regional education associations and without negatively impacting the ability of other school districts or regional education associations to provide sound educational opportunities to their students in a fiscally responsible manner. A decision by the superintendent of public instruction under this subsection may be appealed to the state board of public school education. A decision by the state board is final.
  3. The joint powers agreement ~~requires~~must require that the participating school districts maintain a joint operating fund ~~and share various administrative functions and student services in accordance with subsection 4.~~
  4. ~~a. During the first two school years in which a regional education association is operational, each participating school district shall share in at least two administrative functions and two student services, selected by the district.~~  
~~b. During the third and fourth school years in which a regional education association is operational, each participating school district shall share in at least three administrative functions and three student services, selected by the district.~~  
~~c. During the fifth school year in which a regional education association is operational, and each year thereafter, each participating school district shall share at least five administrative functions and five student services, selected by the district.~~  
d. For purposes of this subsection:
    - (1) "Administrative functions" means:
      - (a) Business management;
      - (b) Career and technical education services management;
      - (c) Curriculum mapping or development;
      - (d) Data analysis;
      - (e) Federal program support;
      - (f) Federal title program management;
      - (g) Grant writing;
      - (h) School improvement;

- (i) ~~School safety and environment management;~~
  - (j) ~~Special education services management;~~
  - (k) ~~Staff development;~~
  - (l) ~~Staff retention and recruitment;~~
  - (m) ~~Staff sharing;~~
  - (n) ~~Technology support; and~~
  - (o) ~~Any other functions approved by the superintendent of public instruction.~~
- (2) ~~"Student services" means:~~
- (a) ~~Advanced placement classes;~~
  - (b) ~~Alternative high schools or alternative high school programs;~~
  - (c) ~~Career and technical education classes;~~
  - (d) ~~Counseling services;~~
  - (e) ~~Common elementary curricula;~~
  - (f) ~~Distance learning classes;~~
  - (g) ~~Dual credit classes;~~
  - (h) ~~Foreign language classes;~~
  - (i) ~~Library and media services;~~
  - (j) ~~Summer programs;~~
  - (k) ~~Supplemental instruction programs; and~~
  - (l) ~~Any other services approved by the superintendent of public instruction.~~
- e. ~~For purposes of this subsection, if a regional education association became operational before July 1, 2005, the 2005-06 school year must be considered the provider's first year of operation.~~
5. The joint powers agreement ~~provides~~must provide:
- a. Criteria for the future participation of school districts that were not parties to the original joint powers agreement;
  - b. An application process by which school districts that were not parties to the original joint powers agreement can become participating districts; and
  - c. A process by which school districts that were not parties to the original joint powers agreement and whose application to participate in the

agreement was denied can appeal the decision to the superintendent of public instruction.

- ~~6-5.~~ The joint powers agreement ~~provides~~must provide for the employment and compensation of staff.
- ~~7-6.~~ The joint powers agreement must:
- a. ~~Establishes~~Establish the number of members on the governing board;
  - b. ~~Establishes~~Establish the manner in which members of the governing board are determined;
  - c. ~~Requires all members~~Require that each member of the governing board ~~or their designees to be individuals~~be an individual currently serving on the board of a participating school district ~~or the designee of a participating school district's board;~~ and
  - d. ~~Allows~~Allow for the inclusion of ex officio nonvoting members on the governing board.
- ~~8-7.~~ The joint powers agreement ~~provides~~must provide that the board of the regional education association shall meet at least quarterly.
- ~~9-8.~~ The joint powers agreement ~~does~~may not permit the regional education association to compensate members of the regional education association board for attending meetings of the board and does not permit the regional education association to reimburse members of the board for any expenses incurred in attending meetings of the board.

**SECTION 4.** A new section to chapter 15.1-09.1 of the North Dakota Century Code is created and enacted as follows:

**Regional education association - Services to be offered.**

1. In order to be eligible for state funding, a regional education association must offer the following services to its member districts:
  - a. Coordination and facilitation of professional development activities for teachers and administrators employed by its member districts;
  - b. Supplementation of technology support services;
  - c. Assistance with achieving school improvement goals identified by the superintendent of public instruction;
  - d. Assistance with the collection, analysis, and interpretation of student achievement data; and
  - e. Assistance with the expansion and enrichment of curricular offerings.
2. Subsection 1 does not preclude a regional education association from offering additional services to its member districts.

**SECTION 5.** A new section to chapter 15.1-18.2 of the North Dakota Century Code is created and enacted as follows:

**Professional development advisory committee - Reimbursement of members.**

Each member of the professional development advisory committee is entitled to receive reimbursement for expenses as provided by law for state officers if the member is attending committee meetings, except that no member may receive reimbursement under this section for more than three committee meetings during each year of the biennium.

**SECTION 6.** A new section to chapter 15.1-18.2 of the North Dakota Century Code is created and enacted as follows:

**Teacher support program - Establishment.**

The education standards and practices board shall:

1. Establish and administer a teacher support program;
2. Employ an individual to serve as a teacher support program coordinator;
3. a. Select and train experienced teachers who will serve as mentors for first-year teachers and assist the first-year teachers with instructional skills development; or
  - b. If a school district or other employing entity listed in section 9 of this Act is not in need of mentors for its first-year teachers, select and train experienced teachers who will work with school district administrators and administrators from the other employing entities to identify the needs of the non-first-year teachers and help the non-first-year teachers address their particular needs through the use of:
    - (1) Research-validated interventions; and
    - (2) Proven instructional methods.

**SECTION 7.** A new section to chapter 15.1-18.2 of the North Dakota Century Code is created and enacted as follows:

**Teacher support program - Availability of services.**

The education standards and practices board may use any moneys it receives for the teacher support program to provide staff compensation, training, evaluation, and stipends for mentors and experienced teachers who assist first-year and non-first-year teachers participating in the program, and to pay for any other administrative expenses resulting from the program; provided, however, that the board may not expend more than five percent of the moneys for administrative purposes.

**SECTION 8.** A new section to chapter 15.1-18.2 of the North Dakota Century Code is created and enacted as follows:

**Teacher support program - Authorized service recipients.**

The education standards and practices board may provide support services to teachers employed by:

1. School districts;

2. Special education units;
3. Area career and technology centers;
4. Regional education associations; and
5. Schools funded by the bureau of Indian education.

<sup>58</sup> **SECTION 9. AMENDMENT.** Section 15.1-21-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-21-02.1. High school graduation — ~~Diploma requirements~~ diploma - Minimum units.**

Except as provided in section 15.1-21-02.3, before a school district, a nonpublic high school, or the center for distance education issues a high school diploma to a student, the student must have successfully completed ~~the following twenty-two units of high school coursework:~~

1. ~~Four units of English language arts from a sequence that includes literature, composition, and speech;~~
2. ~~Three units of mathematics;~~
3. ~~Three units of science, including:~~
  - a. ~~One unit of physical science;~~
  - b. ~~One unit of biology; and~~
  - c. ~~(1) One unit of any other science; or~~  
~~(2) Two one-half units of any other science;~~
4. ~~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. ~~One unit of physical education; or~~
  - b. ~~One-half unit of physical education and one-half unit of health;~~
6. ~~Three units of:~~

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<sup>58</sup> Section 15.1-21-02.1 was also amended by section 3 of House Bill No. 1248, chapter 129, and section 2 of Senate Bill No. 2317, chapter 137.



- a. Foreign languages;
  - b. Native American languages;
  - e. Fine arts; or
  - d. Career and technical education courses; and
7. Any five additional units.
1. The twenty-two units of high school coursework set forth in section 10 of this Act; and
  2. Any additional units of high school coursework required by the issuing entity.

**SECTION 10.** A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

**High school graduation - Minimum requirements.**

Except as provided in section 15.1-21-02.3, the following twenty-two units of high school coursework constitute the minimum requirement for high school graduation:

1. Four units of English language arts from a sequence that includes literature, composition, and speech;
2. Three units of mathematics;
3. Three units of science, including:
  - a. One unit of physical science;
  - b. One unit of biology; and
  - c. (1) One unit of any other science; or  
(2) Two one-half units of any other science;
4. 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. One unit of physical education; or  
b. One-half unit of physical education and one-half unit of health;
6. Three units of:

- a. Foreign languages;
- b. Native American languages;
- c. Fine arts; or
- d. Career and technical education courses; and

7. Any five additional units.

**SECTION 11. 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 is eligible to receive a North Dakota career and technical education scholarship provided the student ~~completes all requirements set forth in subsections 1 through 5 and subsection 7 of section 15.1-21-02.1 for a high school diploma and:~~

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. ~~Completes one~~One unit of algebra II, as defined by the superintendent of public instruction, ~~in fulfillment of the mathematics requirement set forth in subsection 2 of section 15.1-21-02.1; and~~
  - b. ~~Completes two~~Two units of any other mathematics;
3. Completed three units of science, including:
  - a. One unit of physical science;
  - b. One unit of biology; and
  - c. (1) One unit of any other science; or  
(2) 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; and
- e-7. ~~Completes three~~Completed any five additional units, two of which must be in the area of career and technical education;
2. ~~Obtains a grade of at least "C" in each unit or one-half unit required for the diploma;~~
- 3-8. a. (1) ~~Obtains~~Obtained a cumulative grade point average of at least "B"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 of this section; and
- (2) Obtained a grade of at least "C" in each unit or one-half unit; and
- 4-9. Receives~~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 12. 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 is eligible to receive a North Dakota academic scholarship

provided the student ~~completes all requirements set forth in subsections 1 through 5 and subsection 7 of section 15.1-21-02.1 for a high school diploma and:~~

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. ~~Completes one~~One unit of algebra II, as defined by the superintendent of public instruction, ~~in fulfillment of the mathematics requirement set forth in subsection 2 of section 15.1-21-02.1; and~~
  - b. ~~Completes one additional~~One unit of mathematics for which algebra II, as defined by the superintendent of public instruction, is a prerequisite; ~~and~~
- e.3. ~~Completes~~Completed three units of science, including:
  - a. One unit of physical science;
  - b. One unit of biology; and
  - c. (1) One unit of any other science; or  
(2) 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:
  - (1) Two units of the same foreign or native American language;
  - (2) ~~One unit of fine arts or career and technical education~~American sign language; and
- (3)b. One unit of a foreign or native selected from:
  - (1) Foreign languages;
  - (2) Native American language, fine languages;
  - (3) American sign language;

- (4) Fine arts, or career, or
- (5) Career and technical education;
2. Obtains a grade of at least "C" in each unit or one-half unit required for the diploma;
- ~~3-7.~~ Obtains Completed any five additional units, one of which must be in the area of fine arts or career and technical education;
8. a. (1) Obtained a cumulative grade point average of at least "B"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 of this section; and
- (2) Obtained a grade of at least "C" in each unit or one-half unit;
- 4-9. ~~Receives~~Received a composite score of at least twenty-four on an ACT; and
- 5-10. a. ~~Completes~~Fulfilled any one unit requirement set forth in subsections 1 through 7 of this section by means of an advanced placement course and examination; or
- b. Fulfilled any one-half unit requirement set forth in subsections 1 through 7 of this section by means of a dual-credit course.

<sup>59</sup> **SECTION 13. 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 institution of higher education in this state and maintains a cumulative grade point average of 2.75.
- 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 and maintains a cumulative grade point average of 2.75.

<sup>59</sup> Section 15.1-21-02.6 was also amended by section 1 of House Bill No. 1154, chapter 143.

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.
- ~~2-3.~~ A student is not entitled to receive more than six thousand dollars under this section.
- ~~3-4.~~ The state board of higher education shall forward the scholarship directly to the institution in which the student is enrolled.
- 4-5.
  - 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. However, a scholarship under this section is valid only for six academic years after the student's graduation from high school and may not be applied to graduate programs.
- 5-6. A scholarship under this section is available to any eligible student who graduates from a high school in this state or from a high school in a bordering state under chapter 15.1-29.
7. For purposes of North Dakota scholarship eligibility under this section, "full-time" means enrollment in at least twelve credits during a student's first two semesters and enrollment in at least fifteen credits during each semester thereafter or enrollment in the equivalent number of credits, as determined by the state board of higher education, with respect to students in a quarter system.

**SECTION 14.** A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

**North Dakota scholarship - Eligibility - One-time exception.**

1.
  - a. Notwithstanding section 15.1-21-02.6, if a student's cumulative grade point average as determined by the state board of higher education at the conclusion of a semester is below 2.75, the board shall grant an exception and provide the North Dakota scholarship to which the student would otherwise be entitled for the next semester in which the student is enrolled full time. The exception provided by this section is applicable to a student only one time.
  - b. If a student's cumulative grade point average as determined by the state board of higher education at the conclusion of a semester is below 2.75 for a second time, the student is no longer eligible to receive any additional North Dakota academic or career and technical education scholarships.
2.
  - a. Notwithstanding section 15.1-21-02.6, if a student's cumulative grade point average as determined by the state board of higher education at the conclusion of a quarter is below 2.75, the board shall grant an exception and provide the North Dakota scholarship to which the student would otherwise be entitled for the next quarter in which the student is enrolled

full time. The exception provided by this section is applicable to a student only one time.

- b. If a student's cumulative grade point average as determined by the state board of higher education at the conclusion of a quarter is below 2.75 for a second time, the student is no longer eligible to receive any additional North Dakota academic or career and technical education scholarships.

**SECTION 15. AMENDMENT.** Section 15.1-21-08 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-21-08. Reading, mathematics, and science - Administration of test.**

1. The superintendent of public instruction shall administer to public school students a test that is aligned to the state content and achievement standards in reading and mathematics. This test must be administered ~~to all public school students in at least one grade level selected within each of the following grade spans: grades three through five; grades six through nine; and grades ten through twelve. Beginning no later than the 2005-06 school year and annually thereafter, the superintendent of public instruction shall administer the reading and mathematics test~~ annually to all public school students in grades three, four, five, six, seven, eight, and eleven.
2. ~~Beginning no later than the 2007-08 school year and annually thereafter, the~~ The superintendent of public instruction shall administer a test that is aligned to the state content and achievement standards in science. This test must be administered to all public school students in at least one grade level selected from three through five; in at least one grade level selected from six through nine; and in grade eleven. The superintendent of public instruction may not administer the grade eleven test after December first of each school year.

**SECTION 16. AMENDMENT.** Section 15.1-21-18 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-21-18. Career interest inventory - Educational and career planning - Consultation.**

1. A school district shall administer to students, once during their enrollment in grade seven or eight and once during their enrollment in grade nine or ten, a career interest inventory recommended by the department of career and technical education and approved by the superintendent of public instruction.
2. At least once during the seventh or eighth grade, each school district shall arrange for students to participate in either an individual consultative process or a nine-week course, for the purpose of discussing the results of their career interest inventory, selecting high school courses appropriate to their educational pursuits and career interests, and developing individual high school education plans.
3. Each school district shall notify its high school students that, upon request, a student is entitled to receive a consultative review of the student's individual high school education plan at least once during each high school grade. Upon the request of a student, the school district shall provide the consultative review.

4. Each school district shall verify compliance with the requirements of this section at the time and in the manner required by the superintendent of public instruction.

**SECTION 17. AMENDMENT.** Section 15.1-21-19 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-21-19. Summative assessment - Selection - Cost - Exemptions.**

1. Except as otherwise provided, each public and nonpublic school student in grade eleven shall take the ACT, including the writing test, or three WorkKeys assessments recommended by the department of career and technical education and approved by the superintendent of public instruction. The student shall determine which summative assessment to take. ~~The student's school district of residence~~ superintendent of public instruction is responsible for the cost of procuring and administering one summative assessment ~~and its administration~~ per student.
2. The student's career advisor or guidance counselor shall meet with the student to review the student's assessment results.
3. A school district superintendent or a school administrator in the case of a nonpublic school student may exempt a student from the requirements of this section if taking the test is not required by the student's individualized education program plan or if other special circumstances exist.
4. ~~If the superintendent of public instruction determines that the cost of the summative assessment and its administration can be reduced through use of a state procurement process, the superintendent shall work with the school districts to procure and arrange for the administration of the assessment and shall withhold each district's share of the total cost from any state aid otherwise payable to the district.~~ At the time and in the manner determined by the superintendent of public instruction, each school district superintendent and each school administrator in the case of a nonpublic school shall report the number of eleventh grade students who:
  - a. Took the ACT, including the writing test;
  - b. Took the three WorkKeys assessments; and
  - c. Were exempted from the requirements of this section, together with the reason for each exemption.

**SECTION 18. AMENDMENT.** Section 15.1-22-01 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-22-01. Kindergarten - Establishment by board - Request by parent - Levy.**

1. ~~Upon its own motion, the~~ The board of a school district ~~may establish a free public kindergarten.~~
2. ~~If the board receives a written request to provide kindergarten from the parent of a student who will be enrolled in the kindergarten, the board shall either provide at least a half-day kindergarten program for the~~ any student enrolled in



~~the district~~ or pay the tuition required for the student to attend ~~at least a half-day~~ kindergarten program in another school district.

- ~~3-2.~~ The board of a school district that establishes a kindergarten under this section may levy a tax pursuant to subdivision p of subsection 1 of section 57-15-14.2.

<sup>60</sup> **SECTION 19. AMENDMENT.** Section 15.1-22-02 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-22-02. Public kindergarten - Requirements.**

A school district operating a kindergarten:

1. May not employ an individual as a kindergarten teacher unless the individual is licensed to teach by the education standards and practices board or approved by the education standards and practices board;
  2. Shall submit to the superintendent of public instruction and follow a developmentally appropriate curriculum;
  3. Shall provide ~~at least the equivalent of thirty full days of kindergarten~~ instruction, on a half-day or full-day basis, as determined by the school board;
  4. Shall provide for a kindergarten instructional calendar equal to at least fifty percent of the full-time instructional days required in accordance with section 15.1-06-04;
  5. Shall apply all municipal and state health, fire, and safety requirements to the kindergarten; and
- ~~5-6.~~ May not enroll a child who is not five years old before August first of the year of enrollment, unless the child will be five years old before December first and:
- a. The child, by means of developmental and readiness screening instruments approved by the superintendent of public instruction and administered by the kindergarten operator, can demonstrate academic, social, and emotional readiness; or
  - b. The child has been enrolled in another approved kindergarten.

**SECTION 20. AMENDMENT.** Section 15.1-27-03 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-03. Cost of education - Determination.**

1. The superintendent of public instruction shall determine the educational cost per student.
2. In determining the educational cost per student, the superintendent may not use:
  - a. Capital outlay for buildings;

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<sup>60</sup> Section 15.1-22-02 was also amended by section 2 of House Bill No. 1436, chapter 130.

- b. Capital outlay for sites-;
- c. Capital outlay for debt service-;
- d. Expenditures for school activities-;
- e. Expenditures for school lunch programs-;
- f. Expenditures for transportation costs, including schoolbuses; or
- g. Expenditures for early childhood education.

**SECTION 21. AMENDMENT.** Section 15.1-27-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-03.1. (~~Effective through June 30, 2011~~) ~~Weighted average daily membership – Determination.~~**

- 4. ~~For each school district, the superintendent of public instruction shall multiply by:~~
  - a. ~~1.00 the number of full-time equivalent students enrolled in a migrant summer program;~~
  - b. ~~1.00 the number of full-time equivalent students enrolled in an extended educational program in accordance with section 15.1-32-17;~~
  - c. ~~0.60 the number of full-time equivalent students enrolled in a summer education program;~~
  - d. ~~0.50 the number of full-time equivalent students enrolled in a home-based education program and monitored by the school district under chapter 15.1-23;~~
  - e. ~~0.30 the number of full-time equivalent students who on a test of English language proficiency approved by the superintendent of public instruction are determined to be least proficient and are enrolled in a program of instruction for English language learners;~~
  - f. ~~0.25 the number of full-time equivalent students enrolled in an alternative high school;~~
  - g. ~~0.25 the number of full-time equivalent students enrolled in an isolated elementary school;~~
  - h. ~~0.25 the number of full-time equivalent students enrolled in an isolated high school;~~
  - i. ~~0.20 the number of full-time equivalent students attending school in a bordering state in accordance with section 15.1-29-04;~~
  - j. ~~0.20 the number of full-time equivalent students who on a test of English language proficiency approved by the superintendent of public instruction are determined to be not proficient and are enrolled in a program of instruction for English language learners;~~

- ~~k. 0.17 the number of full-time equivalent students enrolled in an early childhood special education program;~~
  - ~~l. 0.07 the number of students enrolled in average daily membership, in order to support the provision of special education services;~~
  - ~~m. 0.07 the number of full-time equivalent students who on a test of English language proficiency approved by the superintendent of public instruction are determined to be somewhat proficient and are enrolled in a program of instruction for English language learners;~~
  - ~~n. 0.004 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~~
  - ~~e. 0.002 the number of students enrolled in average daily membership, in order to support technology.~~
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.

**~~(Effective after June 30, 2011) Weighted average daily membership - Determination.~~**

1. For each school district, the superintendent of public instruction shall multiply by:
  - a. 1.00 the number of full-time equivalent students enrolled in a migrant summer program;
  - b. 1.00 the number of full-time equivalent students enrolled in an extended educational program in accordance with section 15.1-32-17;
  - c. 0.60 the number of full-time equivalent students enrolled in a summer education program;
  - d. 0.50 the number of full-time equivalent students enrolled in a home-based education program and monitored by the school district under chapter 15.1-23;
  - e. 0.30 the number of full-time equivalent students who ~~are~~:
    - (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 are
    - (2) Are enrolled in a program of instruction for English language learners;
  - f. 0.25 the number of full-time equivalent students enrolled in an alternative high school;
  - g. ~~0.25 the number of full-time equivalent students enrolled in an isolated elementary school;~~

- ~~h.~~ ~~0.25 the number of full-time equivalent students enrolled in an isolated high school;~~
- i. 0.20 the number of full-time equivalent students attending school in a bordering state in accordance with section 15.1-29-01;
- ~~j-h.~~ 0.20 the number of full-time equivalent students who are:
- (1) ~~On~~ a test of English language proficiency approved by the superintendent of public instruction are determined to be ~~not more~~ 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 ~~are~~
  - (2) Are enrolled in a program of instruction for English language learners;
- ~~k-i.~~ 0.17 the number of full-time equivalent students enrolled in an early childhood special education program;
- ~~t-j.~~ ~~0.070.10 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;~~
- k. 0.073 the number of students enrolled in average daily membership, in order to support the provision of special education services;
- ~~m-l.~~ 0.07 the number of full-time equivalent students who are:
- (1) ~~On~~ a test of English language proficiency approved by the superintendent of public instruction are determined to be ~~somewhat more proficient and are~~ 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;
- ~~n-m.~~ 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.];
- n. 0.006 the number of students enrolled in average daily membership in each public school in the district that:

- (1) Has acquired and is utilizing the PowerSchool student information system;
- (2) Has acquired and is in the process of implementing the PowerSchool student information system; or
- (3) Will acquire the PowerSchool student information system during the current school year, provided the acquisition is contractually demonstrated; and
- o. 0.004 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~~
- p. ~~0.002 the number of students enrolled in average daily membership, in order to support technology.~~
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 22. AMENDMENT.** Section 15.1-27-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-03.1. (~~Effective through June 30, 2011~~) ~~Weighted average daily membership – Determination.~~**

1. For each school district, the superintendent of public instruction shall multiply by:
- a. ~~1.00 the number of full-time equivalent students enrolled in a migrant summer program;~~
- b. ~~1.00 the number of full-time equivalent students enrolled in an extended educational program in accordance with section 15.1-32-17;~~
- c. ~~0.60 the number of full-time equivalent students enrolled in a summer education program;~~
- d. ~~0.50 the number of full-time equivalent students enrolled in a home-based education program and monitored by the school district under chapter 15.1-23;~~
- e. ~~0.30 the number of full-time equivalent students who on a test of English language proficiency approved by the superintendent of public instruction are determined to be least proficient and are enrolled in a program of instruction for English language learners;~~
- f. ~~0.25 the number of full-time equivalent students enrolled in an alternative high school;~~
- g. ~~0.25 the number of full-time equivalent students enrolled in an isolated elementary school;~~
- h. ~~0.25 the number of full-time equivalent students enrolled in an isolated high school;~~

- i. ~~0.20 the number of full-time equivalent students attending school in a bordering state in accordance with section 15.1-29-04;~~
  - j. ~~0.20 the number of full-time equivalent students who on a test of English language proficiency approved by the superintendent of public instruction are determined to be not proficient and are enrolled in a program of instruction for English language learners;~~
  - k. ~~0.17 the number of full-time equivalent students enrolled in an early childhood special education program;~~
  - l. ~~0.07 the number of students enrolled in average daily membership, in order to support the provision of special education services;~~
  - m. ~~0.07 the number of full-time equivalent students who on a test of English language proficiency approved by the superintendent of public instruction are determined to be somewhat proficient and are enrolled in a program of instruction for English language learners;~~
  - n. ~~0.004 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~~
  - o. ~~0.002 the number of students enrolled in average daily membership, in order to support technology.~~
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.~~

**~~(Effective after June 30, 2011) Weighted average daily membership - Determination.~~**

1. For each school district, the superintendent of public instruction shall multiply by:
    - a. 1.00 the number of full-time equivalent students enrolled in a migrant summer program;
    - b. 1.00 the number of full-time equivalent students enrolled in an extended educational program in accordance with section 15.1-32-17;
    - c. 0.60 the number of full-time equivalent students enrolled in a summer education program;
    - d. 0.50 the number of full-time equivalent students enrolled in a home-based education program and monitored by the school district under chapter 15.1-23;
    - e. 0.30 the number of full-time equivalent students who ~~are~~:
- (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 are

- (2) Are enrolled in a program of instruction for English language learners;
- f. 0.25 the number of full-time equivalent students enrolled in an alternative high school;
- g. ~~0.25 the number of full-time equivalent students enrolled in an isolated elementary school;~~
- h. ~~0.25 the number of full-time equivalent students enrolled in an isolated high school;~~
- i. 0.20 the number of full-time equivalent students attending school in a bordering state in accordance with section 15.1-29-01;
- ~~j-h.~~ 0.20 the number of full-time equivalent students who ~~are~~:
- (1) On a test of English language proficiency approved by the superintendent of public instruction are determined to be ~~not 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 ~~are~~
- (2) Are enrolled in a program of instruction for English language learners;
- ~~k-i.~~ 0.17 the number of full-time equivalent students enrolled in an early childhood special education program;
- ~~l-j.~~ 0.070.10 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;
- k. 0.079 the number of students enrolled in average daily membership, in order to support the provision of special education services;
- ~~m-l.~~ 0.07 the number of full-time equivalent students who ~~are~~:
- (1) On a test of English language proficiency approved by the superintendent of public instruction are determined to be ~~some what more~~ proficient and are 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;
- ~~n-m.~~ 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.];

n. 0.006 the number of students enrolled in average daily membership in each public school in the district that:

(1) Has acquired and is utilizing the PowerSchool student information system;

(2) Has acquired and is in the process of implementing the PowerSchool student information system; or

(3) Will acquire the PowerSchool student information system during the current school year, provided the acquisition is contractually demonstrated; and

o. 0.004 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~~

p. ~~0.002 the number of students enrolled in average daily membership, in order to support technology.~~

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 23. AMENDMENT.** Section 15.1-27-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-03.1. ~~(Effective through June 30, 2011) Weighted average daily membership – Determination.~~**

4. ~~For each school district, the superintendent of public instruction shall multiply by:~~

a. ~~1.00 the number of full-time equivalent students enrolled in a migrant summer program;~~

b. ~~1.00 the number of full-time equivalent students enrolled in an extended educational program in accordance with section 15.1-32-17;~~

c. ~~0.60 the number of full-time equivalent students enrolled in a summer education program;~~

d. ~~0.50 the number of full-time equivalent students enrolled in a home-based education program and monitored by the school district under chapter 15.1-23;~~

e. ~~0.30 the number of full-time equivalent students who on a test of English language proficiency approved by the superintendent of public instruction are determined to be least proficient and are enrolled in a program of instruction for English language learners;~~



- ~~f. 0.25 the number of full-time equivalent students enrolled in an alternative high school;~~
  - ~~g. 0.25 the number of full-time equivalent students enrolled in an isolated elementary school;~~
  - ~~h. 0.25 the number of full-time equivalent students enrolled in an isolated high school;~~
  - ~~i. 0.20 the number of full-time equivalent students attending school in a bordering state in accordance with section 15.1-29-04;~~
  - ~~j. 0.20 the number of full-time equivalent students who on a test of English language proficiency approved by the superintendent of public instruction are determined to be not proficient and are enrolled in a program of instruction for English language learners;~~
  - ~~k. 0.17 the number of full-time equivalent students enrolled in an early childhood special education program;~~
  - ~~l. 0.07 the number of students enrolled in average daily membership, in order to support the provision of special education services;~~
  - ~~m. 0.07 the number of full-time equivalent students who on a test of English language proficiency approved by the superintendent of public instruction are determined to be somewhat proficient and are enrolled in a program of instruction for English language learners;~~
  - ~~n. 0.004 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~~
  - ~~o. 0.002 the number of students enrolled in average daily membership, in order to support technology.~~
- ~~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.~~

**~~(Effective after June 30, 2011) Weighted average daily membership - Determination.~~**

1. For each school district, the superintendent of public instruction shall multiply by:
  - a. 1.00 the number of full-time equivalent students enrolled in a migrant summer program;
  - b. 1.00 the number of full-time equivalent students enrolled in an extended educational program in accordance with section 15.1-32-17;
  - c. 0.60 the number of full-time equivalent students enrolled in a summer education program;

- d. 0.50 the number of full-time equivalent students enrolled in a home-based education program and monitored by the school district under chapter 15.1-23;
- e. 0.30 the number of full-time equivalent students who ~~are~~:
- (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 ~~are~~
- (2) Are enrolled in a program of instruction for English language learners;
- f. 0.25 the number of full-time equivalent students enrolled in an alternative high school;
- g. ~~0.25 the number of full-time equivalent students enrolled in an isolated elementary school;~~
- h. ~~0.25 the number of full-time equivalent students enrolled in an isolated high school;~~
- i. 0.20 the number of full-time equivalent students attending school in a bordering state in accordance with section 15.1-29-01;
- ~~j-h.~~ 0.20 the number of full-time equivalent students who ~~are~~:
- (1) On a test of English language proficiency approved by the superintendent of public instruction are determined to be ~~not~~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 ~~are~~
- (2) Are enrolled in a program of instruction for English language learners;
- ~~k-i.~~ 0.17 the number of full-time equivalent students enrolled in an early childhood special education program;
- ~~j.~~ 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;
- ~~k-k.~~ 0.070.10 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;
- ~~l.~~ 0.079 the number of students enrolled in average daily membership, in order to support the provision of special education services;
- m. 0.07 the number of full-time equivalent students who ~~are~~;

- (1) On a test of English language proficiency approved by the superintendent of public instruction are determined to be somewhat more proficient and are 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;
- n. 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.];
- o. 0.006 the number of students enrolled in average daily membership in each public school in the district that:
- (1) Has acquired and is utilizing the PowerSchool student information system;
- (2) Has acquired and is in the process of implementing the PowerSchool student information system; or
- (3) Will acquire the PowerSchool student information system during the current school year, provided the acquisition is contractually demonstrated; and
- p. 0.004 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~~
- ~~p. 0.002 the number of students enrolled in average daily membership, in order to support technology.~~
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 24. AMENDMENT.** Section 15.1-27-04 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-04. Per student payment rate.**

1. a. The per student payment rate to which each school district is entitled for the first year of the biennium is three thousand ~~two~~nine hundred ~~ten~~ dollars.
- b. The per student payment rate to which each school district is entitled for the second year of the biennium is three thousand ~~seven~~nine hundred ~~seventy nine~~eighty dollars.

2. In order to determine the state aid payment to which each district is entitled, the superintendent of public instruction shall multiply each district's weighted student units by the per student payment rate set forth in subsection 1.

**SECTION 25. AMENDMENT.** Section 15.1-27-07.2 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-07.2. Baseline funding - Determination - Minimum and maximum allowable increases.**

1. The superintendent of public instruction shall determine each school district's baseline funding per weighted student unit by:
  - a. Adding together all state aid received by the district during the 2006-07 school year;
  - b. Subtracting the amount received by the district during the 2006-07 school year for transportation aid, special education excess cost reimbursements, special education contracts, prior year funding adjustments, and per student payments for participation in educational associations governed by joint powers agreements; and
  - c. Dividing the amount determined under subdivision b by the district's 2007-08 weighted student units.
2.
  - a. The superintendent of public instruction shall ensure that the total amount of state aid payable to a district per weighted student unit, for the 2009-10 school year, is at least equal to one hundred eight percent of the baseline funding per weighted student unit, as established in subsection 1.
  - b. The superintendent of public instruction shall ensure that the total amount of state aid payable to a district per weighted student unit, for each school year after the 2009-10 school year, is at least equal to one hundred twelve and one-half percent of the baseline funding per weighted student unit, as established in subsection 1.
3. ~~a-~~ The superintendent of public instruction shall ensure that the total amount of state aid payable to a district per weighted student unit, less any amount received as equity payments under section 15.1-27-11 per weighted student unit, does not exceed, for the ~~2009-10~~2011-12 school year, one hundred ~~twenty-four~~twenty-two percent of the baseline funding per weighted student unit, as established in subsection 1.
  - ~~b. The superintendent of public instruction shall ensure that the total amount of state aid payable to a district per weighted student unit, less any amount received as equity payments under section 15.1-27-11 per weighted student unit, does not exceed, for each school year after the 2009-10 school year, one hundred thirty-four percent of the baseline funding per weighted student unit, as established in subsection 1.~~

**SECTION 26. AMENDMENT.** Section 15.1-27-11 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-11. Equity payments.**

1. The superintendent of public instruction shall:

- a. Divide the imputed taxable valuation of the state by the total average daily membership of all school districts in the state in order to determine the state average imputed taxable valuation per student.
- b. Divide the imputed taxable valuation of each school district by the district's total average daily membership in order to determine each district's average imputed taxable valuation per student.
2. If a school district's imputed taxable valuation per student is less than ninety percent of the statewide imputed taxable valuation per student, the superintendent of public instruction shall calculate the valuation deficiency by:
  - a. Determining the difference between ninety percent of the state average imputed taxable valuation per student and the district's average imputed taxable valuation per student; and
  - b. Multiplying that difference by the district's total average daily membership.
3. Except as provided in subsection 4, the equity payment to which a district is entitled under this section equals the district's valuation deficiency multiplied by the lesser of:
  - a. The district's general fund levy for the taxable year 2008; or
  - b. One hundred eighty-five mills.
4.
  - a. The equity payment to which a district is entitled may not exceed the district's taxable valuation multiplied by its general fund levy for the taxable year 2008.
  - b. If a district's general fund levy for the taxable year 2008 is less than one hundred eighty-five mills, the superintendent of public instruction shall subtract the district's general fund levy for the taxable year 2008 from one hundred eighty-five mills, multiply the result by the district's taxable valuation, and subtract that result from the equity payment to which the district is otherwise entitled.
  - c. If a district's imputed taxable valuation per student is less than fifty percent of the statewide imputed taxable valuation per student, the payment to which the district is entitled under this section may not be less than twenty percent of the statewide imputed taxable valuation per student times the school district's average daily membership, multiplied by one hundred eighty-five mills.
5. In determining the amount to which a school district is entitled under this section, the superintendent of public instruction may not include any payments received by the district as a result of Public Law No. 81-874 [64 Stat. 1100; 20 U.S.C. 236 et seq.] and may not include in the district's average daily membership students who are dependents of members of the armed forces and students who are dependents of civilian employees of the department of defense.
6. In determining the statewide average imputed taxable valuation per student for purposes of this section, the superintendent of public instruction may not include:

- a. Any school district, which if included in the calculation would have an imputed taxable valuation per student that is three times greater than the statewide average imputed taxable valuation per student; and
- b. Any school district, which if included in the calculation would have an imputed taxable valuation per student that is less than one-fifth of the statewide average imputed taxable valuation per student.

Z. For purposes of this section:

- a. "General fund levy" includes a district's high school transportation levy and its high school tuition levy.
- b. "Imputed taxable valuation" means the valuation of all taxable real property in the district plus:
  - (1) An amount determined by dividing seventy percent of the district's mineral and tuition revenue, revenue from payments in lieu of property taxes on distribution and transmission of electric power, revenue from payments in lieu of taxes from electricity generated from sources other than coal, and revenue received on account of the leasing of lands acquired by the United States for flood control, navigation, and allied purposes in accordance with 33 U.S.C. 701c-3 by the district's general fund mill levy for the taxable year 2008; and
  - (2) An amount determined by dividing the district's revenue from mobile home taxes and telecommunications taxes by the district's general fund mill levy for the taxable year 2008.
- c. "Mineral revenue" includes all revenue from county sources reported under code 2000 of the North Dakota school district financial accounting and reporting manual as developed by the superintendent of public instruction in accordance with section 15.1-02-08.
- d. "Tuition revenue" includes all revenue reported under code 1300 of the North Dakota school district financial accounting and reporting manual as developed by the superintendent of public instruction in accordance with section 15.1-02-08. "Tuition revenue" does not include tuition income received specifically for the operation of an educational program provided at a residential treatment facility.

<sup>61</sup> **SECTION 27. 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. If because of severe weather or other emergency conditions a public school or school district remains closed or provides less than a full day of instruction, the public school or school district shall make every effort to reschedule classes so that students receive at least one hundred seventy three ~~the~~ number of full instructional days of instruction ~~required by section 15.1-06-04.~~

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<sup>61</sup> Section 15.1-27-23 was also amended by section 1 of House Bill No. 1030, chapter 148.

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~~ or school district, the governor waive the rescheduling in whole or in part.
3. 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 28. AMENDMENT.** Section 15.1-27-35.3 of the North Dakota Century Code is amended and reenacted as follows:

**~~15.1-27-35.3. (Effective through June 30, 2011) Payments to school districts – Unobligated general fund balance – Report to legislative council.~~**

1. ~~The superintendent of public instruction shall determine the amount of payments due a school district and shall subtract from that the amount by which the unobligated general fund balance of the district on the preceding June thirtieth is in excess of fifty percent of its actual expenditures, plus twenty thousand dollars. Beginning July 1, 2008, the superintendent of public instruction shall determine the amount of payments due a school district and shall subtract from that the amount by which the unobligated general fund balance of the district on the preceding June thirtieth is in excess of forty five percent of its actual expenditures, plus twenty thousand dollars.~~
2. In making the determination required by subsection 1, the superintendent of public instruction may not include in a district's unobligated general fund balance any moneys that:
  - a. ~~(1) Were received by the district during the school year ending June 30, 2009, on account of the leasing of lands acquired by the United States for flood control, navigation, and allied purposes in accordance with 33 U.S.C. 701c-3; and~~
    - (2) Exceeded the amount received by the district during the school year ending June 30, 2008, for the purpose stated in paragraph 1;
  - b. ~~Were received directly by the district from the United States government in accordance with the American Recovery and Reinvestment Act of 2009; or~~
  - c. ~~Were received by the district as supplemental one time grants under section 52 of S.L. 2009, ch. 175.~~
3. ~~Any district having more than fifty thousand dollars excluded in the determination of its ending fund balance, as required by subsection 2, shall provide a report to the legislative council. The report, which must be presented at the time and in the manner directed by the legislative council, must address how the money was expended, including the number of mills by which the district was able to decrease its property taxes, if such was a permitted use.~~

~~(Effective after June 30, 2011)~~ **Payments to school districts - Unobligated general fund balance.**

- ~~1. The superintendent of public instruction shall determine the amount of payments due a school district and shall subtract from that the amount by which the unobligated general fund balance of the district on the preceding June thirtieth is in excess of fifty percent of its actual expenditures, plus twenty thousand dollars. Beginning July 1, 2008, the superintendent of public instruction shall determine the amount of payments due a school district and shall subtract from that the amount by which the unobligated general fund balance of the district on the preceding June thirtieth is in excess of forty-five percent of its actual expenditures, plus twenty thousand dollars.~~
2. In making the determination required by subsection 1, the superintendent of public instruction may not include in a district's unobligated general fund balance any moneys that were received by the district from the federal education jobs fund program.

**SECTION 29.** A new section to chapter 15.1-27 of the North Dakota Century Code is created and enacted as follows:

**Distribution of remaining moneys.**

If any money remains in the grants - state aid line item after the superintendent complies with all statutory payment obligations imposed for a biennium, the superintendent shall use the remaining moneys to provide additional per student payments on a prorated basis according to the latest available average daily membership of each school district.

**SECTION 30. AMENDMENT.** Section 15.1-36-02 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-36-02. School construction projects - Loans.**

1. The board of university and school lands may authorize the use of moneys in the coal development trust fund established pursuant to section 21 of article X of the Constitution of North Dakota and subsection 1 of section 57-62-02 to provide school construction loans, as described in this chapter. The outstanding principal balance of loans under this chapter may not exceed fifty million dollars. The board may adopt policies and rules governing school construction loans.
2. In order to be eligible for a loan under this section, the board of a school district shall:
  - a. Propose a construction project with a cost of at least one million dollars and an expected utilization of at least thirty years;
  - b. Obtain the approval of the superintendent of public instruction for the construction project under section 15.1-36-01; and
  - c. Submit to the superintendent of public instruction an application containing all information deemed necessary by the superintendent, including potential alternative sources or methods of financing the construction project.



3. The superintendent of public instruction shall give priority to any district that meets the requirements for receipt of an equity payment under section 15.1-27-11.
4. If an eligible school district's imputed taxable valuation per student is less than eighty percent of the state average imputed valuation per student, the district is entitled to receive:
  - a. A school construction loan equal to the lesser of ~~eight~~twelve million dollars or eighty percent of the actual project cost;
  - b. An interest rate discount equal to at least ~~fifty~~one hundred but not more than two hundred fifty basis points below the prevailing tax-free bond rates; and
  - c. A term of repayment that may extend up to twenty years.
5. If an eligible school district's imputed taxable valuation per student is equal to at least eighty percent but less than ninety percent of the state average imputed taxable valuation per student, the district is entitled to receive:
  - a. A school construction loan equal to the lesser of ~~seven~~ten million dollars or seventy percent of the actual project cost;
  - b. An interest rate buydown equal to at least ~~fifty~~one hundred but not more than two hundred fifty basis points below the prevailing tax-free bond rates; and
  - c. A term of repayment that may extend up to twenty years.
6. If an eligible school district's imputed taxable valuation per student is equal to at least ninety percent of the state average imputed taxable valuation per student, the district is entitled to receive:
  - a. A school construction loan equal to the lesser of ~~two~~four million ~~five hundred thousand~~ dollars or thirty percent of the actual project cost;
  - b. An interest rate discount equal to at least ~~fifty~~one hundred but not more than two hundred fifty basis points below the prevailing tax-free bond rates; and
  - c. A term of repayment that may extend up to twenty years.
7. The board of a school district may submit its loan application to the superintendent of public instruction before or after receiving authorization of a bond issue in accordance with chapter 21-03. If the vote to authorize a bond issue precedes the application for a loan, the application must be acted upon by the superintendent expeditiously but no later than one hundred eighty days from the date it is received by the superintendent.
8. The superintendent of public instruction shall consider each loan application in the order it received approval under section 15.1-36-01.

9. If the superintendent of public instruction approves the loan, the superintendent may determine the loan amount, the term of the loan, and the interest rate, in accordance with the requirements of this section.
10. The superintendent of public instruction may adopt rules governing school construction loans.
11. For purposes of this section, a construction project means the purchase, lease, erection, or improvement of any structure or facility by a school board, provided the acquisition or activity is within a school board's authority.

**SECTION 31. AMENDMENT.** Section 15.1-37-01 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-37-01. Early childhood education program - Approval.**

1. Any person or school district operating an early childhood education program may request approval of the program from the superintendent of public instruction. The superintendent shall approve an early childhood education program if the program:
  4. a. Is taught by individuals who are licensed to teach in early childhood education by the education standards and practices board;
  2. b. Follows a developmentally appropriate curriculum; ~~and~~
  3. c. Is in compliance with all municipal and state health, fire, and safety requirements; ~~and~~
  - d. Limits its enrollment to children who have reached the age of four before August first in the year of enrollment.
2. ~~Per student funding will not be provided to individuals or school districts offering a prekindergarten. In determining the state aid payments to which a school district is entitled, the superintendent of public instruction may not count any student enrolled in a regular early childhood education program.~~

**SECTION 32. AMENDMENT.** Subsection 1 of section 15.1-37-02 of the North Dakota Century Code is amended and reenacted as follows:

1. The North Dakota early childhood education council consists of:
  - a. A chairman appointed by the governor;
  - b. The superintendent of public instruction, or the superintendent's designee;
  - c. The state health officer, or the officer's designee;
  - d. The director of the department of human services, or the director's designee;
  - e. The North Dakota head start - state collaboration administrator, or the administrator's designee;
  - f. The commissioner of higher education, or the commissioner's designee;

- g. The commissioner of commerce, or the commissioner's designee;
- h. The chairman of the senate education committee, or the chairman's designee;
- ~~h.i.~~ The chairman of the house of representatives education committee, or the chairman's designee; and
- ~~i.~~ The following gubernatorial appointees:
- (1) The superintendent of a school district having at least one thousand students in average daily membership;
  - (2) The superintendent of a school district having fewer than one thousand students in average daily membership;
  - (3) The superintendent of a school district headquartered on a reservation or including reservation land within its boundaries;
  - (4) ~~The principal of a school district;~~
  - (5) ~~An individual employed as an elementary school teacher;~~
  - (6) An individual representing a non-religious-based provider of ~~preschool~~early childhood education;
  - ~~(7)~~(5) An individual representing a religious-based provider of ~~preschool~~early childhood education;
  - ~~(8)~~(6) An individual representing a center-based licensed child care provider;
  - ~~(9)~~(7) An individual representing a home-based licensed child care provider;
  - ~~(10)~~(8) An individual representing a reservation-based head start program;
  - ~~(11)~~(9) An elected member of a school board;
  - ~~(12)~~(10) The parent of a child not yet enrolled in elementary school; ~~and~~
  - ~~(13)~~(11) The parent of a child with ~~special needs~~disabilities not yet enrolled in elementary school; ~~and~~
  - (12) An individual representing children with disabilities.

**SECTION 33. AMENDMENT.** Section 15.1-37-03 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-37-03. Council - Duties.**

The council shall:

1. Review the ~~delivery~~availability and provision of early childhood education, care, and services in this state;
2. ~~Conduct a needs assessment;~~

- ~~3. Review early childhood education standards and propose revisions to the standards as needed;~~
- ~~4. Review/Identify opportunities for public and private sector collaboration in the delivery/provision of early childhood education, care, and services in this state;~~
- ~~5. Develop a comprehensive plan governing the delivery of early childhood education in this state; and~~
- 6-3. Identify ways to assist with the recruitment and retention of individuals interested in working as providers of early childhood education, care, and services, including training and continuing education or professional development opportunities;
4. Seek the advice and guidance of individuals who are uniquely familiar with the nature, scope, and associated challenges of providing early childhood education, care, and services in geographically and socioeconomically diverse settings, and develop recommendations pertaining to the short-term and longer-term improvement and expansion of early childhood education, care, and services in this state; and
5. Provide a biennial report regarding its activities/findings and recommendations to the governor and the legislative council/assembly.

**SECTION 34. APPROPRIATION - SCHOOL DISTRICT RAPID ENROLLMENT GROWTH - GRANTS.** There is appropriated out of any moneys in the oil and gas impact grant fund in the state treasury, not otherwise appropriated, the sum of \$5,000,000, or so much of the sum as may be necessary, to the superintendent of public instruction for the purpose of providing a grant to any school district that can demonstrate rapid enrollment growth, for the biennium beginning July 1, 2011, and ending June 30, 2013.

1. If the number of full-time equivalent students enrolled in a school district has increased by at least seven percent annually and if that increase is equal to at least twenty-five full-time equivalent students, as demonstrated by the district's September tenth fall enrollment report, the district is entitled to receive a grant equal to the per student payment provided for in section 15.1-27-04 multiplied by the actual increase in its full-time equivalent student enrollment.
2. If the amount of the appropriation provided for in this section is insufficient to meet the obligations of this section, the superintendent of public instruction shall prorate the payment based on the percentage of the total amount to which each school district is entitled.
3. The superintendent of public instruction may not expend more than \$2,500,000 in grants under this section during the first year of the biennium.
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 35. APPROPRIATION - GEARING UP FOR KINDERGARTEN.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$625,000, or so much of the sum as may be necessary, to the superintendent of public instruction for the purpose of supporting the gearing up for kindergarten program provided by the North Dakota state university extension service, for the biennium beginning July 1, 2011, and ending June 30,

2013. The North Dakota state university extension service may use up to \$125,000 of the amount appropriated for administrative purposes.

### **SECTION 36. TRANSPORTATION GRANTS - DISTRIBUTION.**

1. During each year of the 2011-13 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 three cents per mile for schoolbuses having a capacity of ten or more passengers;
  - b. Forty-six cents per mile for vehicles having a capacity of nine or fewer passengers;
  - c. Forty-six 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. Forty-six 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; and
  - e. Twenty-six 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. If any moneys provided for transportation payments in the grants transportation line item in the appropriation bill for the superintendent of public instruction, as approved by the sixty-second legislative assembly, remain after

application of the formula provided for in this section, the superintendent of public instruction shall prorate the remaining amounts according to the percentage of the total transportation formula amount to which each school district is entitled.

4. This section does not authorize the reimbursement of any costs incurred in providing transportation for student attendance at extracurricular activities or events.

### **SECTION 37. ISOLATED SCHOOLS - TRANSITION PAYMENTS.**

1. If during the 2010-11 school year a school district received payments as a result of section 15.1-27-15, as the section existed on June 30, 2011, and if that district is not eligible for the factor established under subdivision j of subsection 1 of section 15.1-27-03.1, the district is entitled to the following transition payments:
  - a. For the 2011-12 and 2012-13 school years, an amount equal to that which the district would have received under section 15.1-27-15, as the section existed on June 30, 2011;
  - b. For the 2013-14 school year, an amount equal to seventy-five percent of that which the district would have received under section 15.1-27-15, as the section existed on June 30, 2011;
  - c. For the 2014-15 school year, an amount equal to fifty percent of that which the district would have received under section 15.1-27-15, as the section existed on June 30, 2011; and
  - d. For the 2015-16 school year, an amount equal to twenty-five percent of that which the district would have received under section 15.1-27-15, as the section existed on June 30, 2011.
2. Upon the closure of a school that met the definition of isolated under section 15.1-27-15, as it existed on June 30, 2011, the superintendent of public instruction shall cease to provide to the district the transition payments established under subsection 1.

### **SECTION 38. ALTERNATIVE MIDDLE SCHOOL - GRANTS.**

1. During the second year of the 2011-13 biennium, the superintendent of public instruction shall expend up to \$300,000 from the grants - other grants line item in the appropriation bill for the superintendent of public instruction, as approved by the sixty-second legislative assembly, for the purpose of providing a grant to any school district that offers an alternative education program for students enrolled in grades six through eight.
2. In order to determine the amount that a school district may receive under this section, the superintendent of public instruction shall multiply by a factor of .15 the number of students in grades six through eight who are enrolled in an alternative education program for at least fifteen hours per week.
3. If the expenditure authorized in this section is insufficient for providing grants to all eligible school districts, the superintendent of public instruction shall prorate the grants based on the percentage of the total to which each school district is entitled.

**SECTION 39. USE OF NEW MONEY - TEACHER COMPENSATION INCREASES - REPORTS TO THE LEGISLATIVE MANAGEMENT.**

1. During the 2011-13 biennium, the board of each school district shall use an amount equal to at least seventy percent of all new money received by the district for per student payments to increase the compensation paid to teachers and to provide compensation to teachers who begin employment with the district on or after July 1, 2011.
2. For purposes of this section, the superintendent of public instruction shall calculate the amount of new money available during the 2011-13 biennium by:
  - a. Determining the total amount of dollars in the grants - state school aid line item in the 2011-13 appropriation bill for the superintendent of public instruction, as approved by the sixty-second legislative assembly and subtracting from that amount:
    - (1) Equity payments;
    - (2) Regional education association moneys and grants;
    - (3) PowerSchool acquisition, implementation, and utilization moneys; and
    - (4) Contingent distributions;
  - b. Determining the total amount of dollars in the grants - state school aid line item and in the grants - supplemental line item in the 2009-11 appropriation bill for the superintendent of public instruction, as approved by the sixty-first legislative assembly and subtracting from that amount:
    - (1) Equity payments;
    - (2) Regional education association moneys and grants;
    - (3) Technology support payments; and
    - (4) Contingent distributions; and
  - c. Subtracting the amount arrived at under subdivision b from the amount arrived at under subdivision a.
3. School districts providing educational services under a cooperative agreement approved by the superintendent of public instruction must, for purposes of this section, be treated as a single district.
4.
  - a. This section does not apply to a school district if the board of the school district, after a public hearing at which public testimony and documentary evidence are accepted, determines in its discretion and by an affirmative vote of two-thirds of the members of the board that complying with subsection 1 would place the school district in the position of having insufficient fiscal resources to meet the school district's other obligations.
  - b. Within ten days of the vote required by subdivision a, the school board shall notify the superintendent of public instruction of its action and shall file a report detailing the grounds for its determination and action.

- c. The superintendent of public instruction shall report all notices received under this subsection to the legislative management.

#### **SECTION 40. EDUCATION FUNDING AND TAXATION COMMITTEE - CREATION - STUDY.**

1. The education funding and taxation committee consists of the following eight members:
  - a. The house majority leader or the leader's designee selected from among the members of the house education committee or the house finance and taxation committee;
  - b. The house minority leader or the leader's designee selected from among the members of the house education committee or the house finance and taxation committee;
  - c. The senate majority leader or the leader's designee selected from among the members of the senate education committee or the senate finance and taxation committee;
  - d. The senate minority leader or the leader's designee selected from among the members of the senate education committee or the senate finance and taxation committee;
  - e. The chairman of the house education committee, or the chairman's designee;
  - f. The chairman of the house finance and taxation committee, or the chairman's designee;
  - g. The chairman of the senate education committee, or the chairman's designee; and
  - h. The chairman of the senate finance and taxation committee, or the chairman's designee.
2. The chairman of the legislative management shall select one from among the voting members to serve as the chairman of the committee.
3. The committee shall operate according to the statutes and procedure governing the operation of other legislative management interim committees.
4. The committee shall examine short-term and longer-term state and local involvement in funding elementary and secondary education. The committee shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the legislative management.

**SECTION 41. ADULT EDUCATION - STUDY.** During the 2011-12 interim, the legislative management shall consider studying the provision and funding of adult education. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the legislative management.

#### **SECTION 42. ALTERNATIVE EDUCATION - MIDDLE SCHOOL - DATA COLLECTION - REPORT.**



1. The superintendent of public instruction shall collect data regarding the provision of services to students in grades six through eight who are enrolled in an alternative education program for at least an average of fifteen hours per week. The data must include:
  - a. The number of school districts offering alternative education programs to students in grades six through eight;
  - b. The number of students in grades six through eight who are enrolled in alternative education programs;
  - c. The number of students in grades six through eight who are enrolled in alternative education programs and who are eligible for free or reduced lunches under the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.];
  - d. The average number of hours per week that students in grades six through eight are spending in alternative education programs;
  - e. A quantification of the students' academic accomplishments; and
  - f. Any reductions in the number of students enrolled in alternative high schools.
2. Before October 1, 2012, the superintendent of public instruction shall report the data to the legislative management.

**SECTION 43. REPEAL.** Section 5 of this Act and sections 15.1-18.2-01, 15.1-18.2-02, and 15.1-18.2-03 of the North Dakota Century Code are repealed.

**SECTION 44. REPEAL.** Section 15.1-27-15 of the North Dakota Century Code is repealed.

**SECTION 45. EFFECTIVE DATE.** Section 22 of this Act becomes effective on July 1, 2012. Section 43 of this Act becomes effective on July 1, 2013.

**SECTION 46. EFFECTIVE DATE - EXPIRATION DATE.** Section 23 of this Act is effective on July 1, 2013, through June 30, 2015, and after that date is ineffective.

**SECTION 47. EMERGENCY.** Sections 27 and 40 of this Act are declared to be an emergency measure.

Approved May 10, 2011  
Filed May 11, 2011

## CHAPTER 148

### HOUSE BILL NO. 1030

(Legislative Management)  
(Education Committee)

AN ACT to amend and reenact section 15.1-27-23 of the North Dakota Century Code, relating to gubernatorial waivers of required class rescheduling.

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

<sup>62</sup> **SECTION 1. 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 payments to school districts.**

1. If because of severe weather or other emergency conditions a public school or school district remains closed or provides less than a full day of instruction, the public school or school district shall make every effort to reschedule classes so that students receive at least one hundred ~~seventy-three~~seventy-five full days of instruction.
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~~ of school district, the governor waive the rescheduling in whole or in part.
3. 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.

Approved April 19, 2011  
Filed April 20, 2011

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<sup>62</sup> Section 15.1-27-23 was also amended by section 27 of Senate Bill No. 2150, chapter 147.

## CHAPTER 149

### HOUSE BILL NO. 1074

(Representatives D. Johnson, Hanson, Wall)  
(Senators Luick, Robinson, Oehlke)

AN ACT to amend and reenact subsection 1 of section 15.1-29-14 and section 15.1-32-19 of the North Dakota Century Code, relating to school district reimbursement for boarding care costs; 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.** Subsection 1 of section 15.1-29-14 of the North Dakota Century Code is amended and reenacted as follows:

1. a. Except as provided in subdivision b, for purposes of applying this chapter, a student's school district of residence is the district in which the student's custodial parent or legal guardian resides:
  - (1) At the time that a state court, tribal court, director of juvenile court, or the division of juvenile services issues an order requiring the student to stay for a prescribed period at a state-licensed foster home or at a state-licensed child care home or facility;
  - (2) At the time a county or state social service agency places the student, with the consent of the student's parent or legal guardian, at a state-licensed foster home or at a state-licensed child care home or facility;
  - (3) At the time the student is initially placed in a state-operated institution, even if the student is later placed at a state-licensed foster home or at a state-licensed child care home or facility; or
  - (4) At the time the student is placed voluntarily, by a parent or legal guardian, in a state-operated institution or in a state-licensed child care home, facility, or program, located either within or outside the student's school district of residence, including those defined in sections 25-01.2-01 and 50-11-00.1.
- b. A determination regarding the student's school district of residence made under subdivision a is valid until the September fifteenth following the determination. On that date and each September fifteenth thereafter, the placing agency or the entity funding the student's placement shall determine the district in which the student's custodial parent or legal guardian resides and shall notify the district that it is deemed to be the student's district of residence for purposes of this chapter. If, however, the student is placed in accordance with paragraph 4 of subdivision a and the placement is privately funded, the administrator of the facility or program in which the student is placed shall determine the student's school district of residence and provide the notification required by this subdivision.

**SECTION 2. AMENDMENT.** Section 15.1-32-19 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-32-19. Boarding care costs - Reimbursement of school district.**

The superintendent of public instruction, ~~within the limits of legislative appropriation,~~ shall reimburse a student's school district of residence an amount equal to eighty percent of the room and board costs paid by the district for a student with disabilities who is placed in a facility that is located either within or outside of the student's school district of residence in order to receive special education services ~~not available within the student's school district of residence.~~ The student's school district of residence is liable for any room and board costs in excess of those reimbursed as provided in this section. The placement of a student with disabilities in a public or private facility will be made by a school district. The placement of a student with disabilities in congregate care will be made in a facility designated by the department of human services.

**SECTION 3. EFFECTIVE DATE.** This Act becomes effective on July 1, 2011.

**SECTION 4. EXPIRATION DATE.** This Act is effective through June 30, 2013, and after that date is ineffective.

**SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 28, 2011  
Filed April 28, 2011

## CHAPTER 150

### HOUSE BILL NO. 1073

(Representatives Mueller, D. Johnson, Rust, Wall)  
(Senators Heckaman, G. Lee)

AN ACT to amend and reenact sections 15.1-32-01, 15.1-32-12, 15.1-32-13, and 15.1-32-15 of the North Dakota Century Code, relating to special education.

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

<sup>63</sup> **SECTION 1. AMENDMENT.** Section 15.1-32-01 of the North Dakota Century Code is amended and reenacted as follows:

#### 15.1-32-01. Definitions.

As used in this chapter:

1. "Related services" means transportation and developmental and corrective or supportive services required to assist a student with disabilities to benefit from special education.
2. "Special education" means instruction designed to meet the needs of a student with disabilities, transportation, and corrective and supporting services required to assist a student with disabilities in taking advantage of, or responding to, educational programs and opportunities.
3. "Student who is gifted" means an individual who is identified by qualified professionals as being capable of high performance and who needs educational programs and services beyond those normally provided in a regular education program.
4. a. "Student with a disability" means an individual who is at least three years of age but who has not reached the age of twenty-one before September first of the year in which the individual turns twenty-one and who requires special education and related services because of:
  - (1) ~~Mental retardation~~ An intellectual disability;
  - (2) A hearing impairment, including deafness;
  - (3) Deaf-blindness;
  - (4) A speech or language impairment;
  - (5) A visual impairment, including blindness;
  - (6) An emotional disturbance;

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<sup>63</sup> Section 15.1-32-01 was also amended by section 4 of Senate Bill No. 2142, chapter 207.

- (7) An orthopedic impairment;
- (8) Autism;
- (9) A traumatic brain injury;
- (10) Other health impairment; or
- (11) A specific learning disability.

- b. "Student with a disability" includes a student age eighteen through twenty-one who is incarcerated in an adult correctional facility and who, in the last educational placement prior to incarceration, was identified as being a student with a disability and did not have an individualized education program or was identified as being a student with a disability and had an individualized education program.

**SECTION 2. AMENDMENT.** Section 15.1-32-12 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-32-12. Multidisciplinary teams - Individualized education programs - Services plans.**

If a school district has evidence of a student's disability, the school district shall convene a multidisciplinary team ~~consisting of. The team must include~~ educational professionals, ~~medical professionals,~~ and the student's parent ~~and may include medical professionals. The team shall~~ share assessment information related to the student's suspected disability. If necessary, the team shall develop an individualized education program or services plan and make recommendations for the delivery of special education and related services to the student.

**SECTION 3. AMENDMENT.** Section 15.1-32-13 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-32-13. Related services - Insurance options - School district responsibility.**

Each school district shall ~~require that all family insurance options be exhausted in paying the costs of determining a student's medically related disability, obtain parental consent before accessing any family insurance options, whether public or private, to pay for the cost of determining a student's medically related disability and in paying to pay~~ for the provision of related services to the student, provided there is no financial loss to the student or the student's parent. The school district is responsible for all costs not covered by the family's insurance.

**SECTION 4. AMENDMENT.** Section 15.1-32-15 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-32-15. Student with disabilities - Attendance at private institution or out-of-state public school.**

- 1. If in the opinion of an individualized education program team or an education services team a student is unable to attend a public school in the student's school district of residence because of a ~~physical disability, a mental disability, or a learning~~ disability, and if no public school in the state will accept the

student and provide the necessary services, the student's school district of residence shall contract with:

- a. A private, accredited, nonsectarian, nonprofit institution that is located within or outside of this state and which has the proper facilities for the education of the student; or
  - b. A public school located outside of this state that has proper facilities for the education of the student.
2. The superintendent of public instruction shall approve in advance the terms of the contract and the services to be provided by the admitting institution or school.
  3. The contract must provide that the student's school district of residence is liable for the cost of educating the student.
  4. A student who receives services under this section is deemed to be enrolled in the student's school district of residence for purposes of determining average daily membership.

Approved March 28, 2011

Filed March 28, 2011

## CHAPTER 151

### HOUSE BILL NO. 1066

(Representatives Rust, Sanford, Wieland)  
(Senators Andrist, Miller)

AN ACT to amend and reenact sections 15.1-36-01, 15.1-36-04, and 18-12-04 of the North Dakota Century Code, relating to thresholds and criteria for school district construction projects; to provide an effective date; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 15.1-36-01 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-36-01. (~~Effective through June 30, 2014~~) School construction projects - Approval.**

1. Notwithstanding the powers and duties of school boards provided by law, the superintendent of public instruction shall approve the construction, purchase, repair, improvement, modernization, or renovation of any public school building or facility before commencement of the project if the cost of the project, as estimated by the school board, is in excess of forty one hundred thousand dollars.
2. The superintendent of public instruction may not approve a project unless the school district proposing the project:
  - a. Demonstrates the need for the project and the educational utility of the project or demonstrates potential utilization of the project by a future reorganized school district; ~~and~~
  - b. In the case of new construction or a renovation affecting more than fifty percent of an existing structure's square footage, demonstrates that circumstances within the district are likely to result in a stable or increasing student population; and
  - c. Demonstrates the capacity to pay for the project under rules adopted by the superintendent of public instruction pursuant to chapter 28-32.
3. a. If the superintendent of public instruction denies the project, the school board may appeal the superintendent's decision to the state board of public school education. In considering the appeal, the state board shall review:
  - (1) The need for the project;
  - (2) The educational utility of the project;
  - (3) The potential use of the project by a future reorganized school district;
  - (4) The capacity of the district to pay for the project; and



- (5) Any other objective factors relative to the appeal.
- b. The decision of the state board is final.
4. ~~This section does not apply to any construction, purchase, repair, improvement, renovation, or modernization required as part of a plan of correction approved by the state fire marshal under section 15.1-06-09 unless the cost of the improvements exceeds seventy five thousand dollars.~~
5. This section is applicable to any construction, purchase, repair, improvement, renovation, or modernization, even if the school board pays for the project in whole or in part with moneys received on account of the leasing of lands acquired by the United States for flood control, navigation, and allied purposes in accordance with 33 U.S.C. 701c-3 or in accordance with moneys received under the American Recovery and Reinvestment Act of 2009.
- 6.5. For purposes of this chapter, "facility" includes a public school parking lot, public school athletic complex, or any other improvement to real property owned by the school district.

**~~(Effective after June 30, 2011) School construction projects—Approval.~~**

1. ~~Notwithstanding the powers and duties of school boards provided by law, the superintendent of public instruction shall approve the construction, purchase, repair, improvement, modernization, or renovation of any public school building or facility before commencement of the project if the cost of the project, as estimated by the school board, is in excess of twenty five thousand dollars.~~
2. ~~The superintendent of public instruction may not approve a project unless the school district proposing the project:~~
- a. ~~Demonstrates the need for the project, the educational utility of the project, and the ability to sustain a stable or increasing student enrollment for a period of time at least equal to the anticipated usable life of the project or demonstrates potential utilization of the project by a future reorganized school district; and~~
- b. ~~Demonstrates the capacity to pay for the project under rules adopted by the superintendent of public instruction pursuant to chapter 28-32.~~
3. a. ~~If the superintendent of public instruction denies the project, the school board may appeal the superintendent's decision to the state board of public school education. In considering the appeal, the state board shall review:~~
- (1) ~~The need for the project;~~
- (2) ~~The educational utility of the project;~~
- (3) ~~The school district's ability to sustain a stable or increasing student enrollment for a period of time at least equal to the anticipated usable life of the project;~~
- (4) ~~The potential use of the project by a future reorganized school district;~~

~~(5) The capacity of the district to pay for the project; and~~

~~(6) Any other objective factors relative to the appeal.~~

b. The decision of the state board is final.

- ~~4. This section does not apply to any construction, purchase, repair, improvement, renovation, or modernization required as part of a plan of correction approved by the state fire marshal under section 15.1-06-09 unless the cost of the improvements exceeds seventy five thousand dollars.~~
- ~~5. For purposes of this chapter, "facility" includes a public school parking lot, public school athletic complex, or any other improvement to real property owned by the school district.~~

**SECTION 2. AMENDMENT.** Section 15.1-36-04 of the North Dakota Century Code is amended and reenacted as follows:

#### **15.1-36-04. Evidences of indebtedness.**

The board of a school district may issue and sell evidences of indebtedness under chapter 21-03 to finance the construction or improvement of a project approved under this chapter. The principal amount of the loan and the evidences of indebtedness to repay the loan may not exceed the ~~lesser of thirty percent of the school district's taxable valuation or five million dollars~~ loan amount for which the district is eligible under this chapter. Evidences of indebtedness issued under this chapter constitute a general obligation of the school district.

**SECTION 3. AMENDMENT.** Section 18-12-04 of the North Dakota Century Code is amended and reenacted as follows:

#### **18-12-04. Employment of registered architects and engineers.**

All plans and specifications for construction, except agricultural sheds and barns, the monetary worth of which is one hundred thousand dollars or more, must be prepared by and the construction administration and construction observation services supervised by architects or engineers registered in this state. The architect or engineer is legally responsible for designing the building in accordance with the provisions of this chapter of adequate strength so as to resist fire, and constructing the building in a workmanlike manner, according to the plans and specifications as approved. ~~All School district projects for which the tax money exceeds two thousand dollars must be submitted to the department of public instruction or are subject to the approval requirements of section 15.1-36-01 and projects involving institutions of higher education under the control of the state board of higher education for are subject to the approval requirements of chapter 15-10.~~

**SECTION 4. EFFECTIVE DATE.** This Act becomes effective on July 1, 2011.

**SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 4, 2011  
Filed April 4, 2011

# ELECTIONS

## CHAPTER 152

### SENATE BILL NO. 2254

(Senator Dever)  
(Representative L. Meier)

AN ACT to amend and reenact sections 4-22-21, 15.1-09-13, 16.1-01-01, 16.1-02-03, 16.1-02-04, 16.1-02-09, 16.1-02-10, 16.1-02-12, 16.1-02-13, 16.1-02-15, and 16.1-03-11, subsection 1 of section 16.1-06-15, sections 16.1-07-08, 16.1-07-09, 16.1-07-10, 16.1-07-11, 16.1-07-12, and 16.1-07-12.1, subsection 1 of section 16.1-09-03, sections 16.1-10-03, 16.1-11-05, 16.1-11-20, 16.1-11-22, 16.1-11.1-01, 16.1-11.1-03, and 16.1-11.1-06, subsection 1 of section 16.1-11.1-07, subsection 1 of section 16.1-12-04, and sections 16.1-13-03, 16.1-15-04, 16.1-15-08, 16.1-15-21, 16.1-15-22, 16.1-15-25, 16.1-15-26, 16.1-15-27, 16.1-15-33, 16.1-15-37, 16.1-15-39, 16.1-15-40, 16.1-15-41, 16.1-15-44, 16.1-15-48, 40-38-01, and 61-04.1-30 of the North Dakota Century Code, relating to election administration.

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

**SECTION 1. AMENDMENT.** Section 4-22-21 of the North Dakota Century Code is amended and reenacted as follows:

##### **4-22-21. Regular election of district - When held - Regulations governing.**

The regular election of soil conservation districts must be held at the same time, and at the same place, as the general election is held. All qualified electors in the district may vote in any regular election of the district. Any land occupier living in the district desiring to be a candidate for the office of supervisor at a district election and who has failed to file a nominating petition may ~~furnish stickers to be attached to the ballot and the ballot must have blank spaces below the names of candidates nominated by petition for writing in other names~~ campaign and be elected as a write-in candidate for the office.

**SECTION 2. AMENDMENT.** Section 15.1-09-13 of the North Dakota Century Code is amended and reenacted as follows:

##### **15.1-09-13. Election precincts - Polling places - Election officials.**

1. At least thirty-five days prior to the annual election, the board of each school district shall designate one or more precincts for the election. The board shall arrange the precincts in a way that divides the electors of the district as equally as possible.
2. At least thirty-five days prior to the annual election, the board of each school district shall designate one or more polling places for the election. The board shall locate the polling places as conveniently as possible for the voters in the precinct. Once established by the board, a polling place must remain the

polling place for a precinct until it is changed by subsequent action of the board.

3. TheFor school board elections not held in conjunction with county elections, the board shall appoint two election judges and two election clerks for each precinct. Before opening the polls, the judges and clerks shall take an affirmation or oath to perform their duties according to law and to the best of their ability. The affirmation or oath may be administered by any officer authorized to administer oaths or by any of the judges or clerks.
4. For school board elections held in conjunction with county elections, the county election boards shall administer the election in the same manner as the county or state election.

**SECTION 3. AMENDMENT.** Section 16.1-01-01 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-01-01. Secretary of state to supervise election procedures - County administrator of elections.**

1. The secretary of state must be, ex officio, supervisor of elections and may employ additional personnel to administer this title. The secretary of state shall supervise the conduct of elections and in that supervisory capacity has, in addition to other powers conferred by law, the power to examine upon the secretary of state's request or the request of any election official, any election ballot or other material, electronic voting system or counting machine authorized by chapter 16.1-06, or device used in connection with any election, for the purpose of determining sufficient compliance with the law and established criteria and standards adopted by the secretary of state according to section 16.1-06-26. The secretary of state, upon determining that any ballot or other material, electronic voting system or counting machine, or device is not in sufficient compliance with the law or established criteria and standards, shall direct the proper changes to be made, and in the case of electronic voting systems and counting machines, may decertify the electronic voting systems and counting machines according to the rules adopted under section 16.1-06-26.
2. In addition to other duties provided elsewhere by law, the secretary of state shall:
  - a. Develop and implement uniform training programs for all election officials in the state.
  - b. Prepare information for voters on voting procedures.
  - c. Publish and distribute an election calendar, a manual on election procedures, and a map of all legislative districts.
  - d. Convene a state election conference of county auditors at the beginning of each election year and whenever deemed necessary by the secretary of state to discuss uniform implementation of state election policies.
  - e. Prescribe the form of all ballots and the form and wording of ballots on state referendum questions, issues, and constitutional amendments.

- f. Investigate or cause to be investigated the nonperformance of duties or violations of election laws by election officers.
  - g. Require such reports from county auditors on election matters as deemed necessary.
  - h. Certify results of statewide elections.
  - i. Prepare and publish reports whenever deemed necessary on the conduct and costs of voting in the state, including a tabulation of election returns and such other information and statistics as deemed appropriate.
  - j. Establish standards for voting precincts and polling locations, numbering precincts, precinct maps, maintaining and updating pollbooks, and forms and supplies, including but not limited to, ballots, pollbooks, and reports.
  - k. Prescribe the order in which each political subdivision will appear on an election ballot.
  - l. Develop and conduct a test election for the state's voting system prior to each statewide election utilizing the votes cast within each county according to the logic and accuracy testing required in section 16.1-06-15.
3. In carrying out the secretary of state's duties and to assure uniform voting opportunities throughout the state, and for the purpose of implementing the provisions of this title and any other requirement imposed upon the state by the Help America Vote Act of 2002 [Pub. L. 107-252; 116 Stat. 1666; 42 U.S.C. 15301 et seq.] not otherwise addressed in this Act, the secretary of state may from time to time issue rules the secretary of state deems necessary, which must be consistent with the provisions of this title or the Help America Vote Act of 2002 and be adopted and published in accordance with chapter 28-32, but which need not comply with section 28-32-07.
4. In each county there must be a county administrator of elections who must be the county auditor. The county auditor is responsible to the secretary of state for the proper administration within the auditor's county of state laws, rules, and regulations concerning election procedures.
5. In addition to other statutory duties, the county auditor shall:
  - a. Procure and distribute supplies required for voting in the county.
  - b. Prepare and disseminate voter information as prescribed by the secretary of state.
  - c. Fully comply with the test election required of this section.
  - d. Carry out uniform training programs for all county and precinct election officials as prescribed by the secretary of state.
  - ~~e-e.~~ Receive and handle complaints referred to the county auditor by any voter or precinct official involving circulation of petitions, challenges to voters, actions of election officials, or irregularities of any kind in voting. The county auditor shall refer complaints to the secretary of state or the proper prosecuting authority, as the county auditor deems appropriate.

Upon completion of the duties required by this subsection, the county auditor shall certify to the secretary of state, in the manner prescribed by the secretary of state, that the duties have been completed.

**SECTION 4. AMENDMENT.** Section 16.1-02-03 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-02-03. Secretary of state to establish the central voter file with department of transportation and county auditors.**

1. Not later than the primary election in 2008, the secretary of state shall establish the central voter file in cooperation with the department of transportation and county auditors.
2. The secretary of state shall establish the initial central voter file from records maintained by the department of transportation. Each county auditor shall compare the initial central voter file against all precinct pollbooks used in the auditor's county during and created from the general elections in the two previous election years and any reasonably reliable updates made by the county auditor since the general elections in the two previous election years. Any individual contained in the initial central voter file who voted at either of the general elections in the two previous election years must be designated as "active" in the initial central voter file. Any individual contained in the initial central voter file who did not vote at either of the general elections in the two previous election years must be designated as "inactive" in the initial central voter file.
3. Each individual contained in the initial central voter file must be assigned a unique identifier. An individual's unique identifier must be ~~created from unique information and data obtained from records maintained by the department of transportation and the pollbooks from the general elections in the two previous election years. If it is not possible to assign a unique identifier to an individual contained in the initial central voter file, a unique identifier must be randomly generated and assigned to the individual.~~
4. ~~The secretary of state shall adopt rules for generating and assigning a unique identifier to each individual contained in the central voter file according to section 16.1-02-11 and subsection 3 of section 16.1-01-01.~~
5. When establishing the initial central voter file from the records maintained by the department of transportation and the pollbooks from the general elections in the two previous election years, the secretary of state and county auditors shall attempt to correct address errors and misspellings of names.

**SECTION 5. AMENDMENT.** Section 16.1-02-04 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-02-04. Precinct boundaries changed - Change to the central voter file.**

When the boundaries of a precinct are changed, the county auditor shall immediately update the voter records for that precinct in the central voter file to accurately reflect those changes. The county auditor shall provide to the secretary of state all materials requested for existing precincts or to assist in making or verifying the required changes.

**SECTION 6. AMENDMENT.** Section 16.1-02-09 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-02-09. Department of transportation to report updates to the secretary of state - Changes to records in the central voter file.**

1. The department of transportation shall report regularly to the secretary of state any relevant changes and updates to records maintained by the department of transportation which may require changes and updates to be made to records of individuals contained in the central voter file.
2. The county auditor may change the designation of individuals contained in the central voter file whose change of address can be confirmed by the United States postal service. The secretary of state may provide each county auditor with periodic reports on any individual whose change of address can be confirmed by the United States postal service.
3. If a qualified elector makes a written request to the county auditor for inclusion in the central voter file, the county auditor shall collect the required information from the individual and add the individual's name to the central voter file with the designation of "~~inactive~~active".

**SECTION 7. AMENDMENT.** Section 16.1-02-10 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-02-10. Posting voting history - Failure to vote - Individuals designated inactive.**

Within seventy-five days after each election, each county auditor shall post the voting history for each individual who voted in the election. After the close of the ~~2010~~each even-numbered calendar year, the secretary of state shall determine if any individual has not voted during the preceding four years and shall change the status of each such individual to "inactive" in the central voter file. The secretary of state shall prepare a report to each county auditor which contains the name of each individual who has been designated as "inactive" in the central voter file. Although not counted in an election, a late absentee ballot from an individual may not be used to designate an individual as "inactive" in the central voter file.

**SECTION 8. 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 designation showing whether the individual's ability 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 identification number and state of any state-issued identification regardless of the state in which the identification was issued, if available.
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 9. AMENDMENT.** Section 16.1-02-13 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-02-13. Information contained in pollbooks generated from the central voter file.**

The county auditor shall generate a pollbook for each precinct in the county from the central voter file by the day before an election. With the exception of a record designated "secured active" and the unique identifier voter's birth date and identification number of any state-issued identification regardless of the state in which the identification was issued, which are exempt records, the precinct pollbooks are open records under section 44-04-18. The secretary of state shall prescribe procedures for generating pollbooks and for transporting the pollbooks to the election judges for use on election day. Pollbooks generated from the central voter file must contain the following information for each individual contained therein:

1. The complete legal name of the individual.
2. The complete residential address of the individual.
3. The complete mailing address of the individual, if different from the individual's residential address.
4. The unique identifier generated and assigned to the individual.
5. The county, legislative district, city or township, school district, county commissioner district, if applicable, precinct name, and precinct number in which the individual resides. A ballot-style code identifying this information may be used in place of the information required by this subsection.
6. Any other information requested of and obtained from the individual deemed necessary by the secretary of state for the proper administration of the pollbook.

**SECTION 10. AMENDMENT.** Section 16.1-02-15 of the North Dakota Century Code is amended and reenacted as follows:



**16.1-02-15. Voter lists and reports may be made available for election-related purposes - Funds received.**

Except as otherwise provided by law, a voter list or a report generated from the central voter file may be made available to a candidate, political party, or a political committee for election-related purposes. Any information obtained by a candidate, political party, or political committee for election-related purposes from a list or report generated from the central voter file may not be sold or distributed for a purpose that is not election-related. Except for information identified in the central voter file under subsections 1, 2, 3, 4, 5, 6, 7, and ~~8~~10 of section 16.1-02-12, which may be made available to a candidate, political party, or political committee for election-related purposes, information in the central voter file is an exempt record. An individual's record that is designated as "secured active" is an exempt record and is not available to any candidate, political party, or political committee for any purpose. Any funds received by the secretary of state to pay the cost of producing a report or list of voters contained in the central voter file must be deposited in the secretary of state's general services operating fund.

**SECTION 11. AMENDMENT.** Section 16.1-03-11 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-03-11. State committee - Meetings - Organization - Vacancies.**

The state committee shall meet on or before July first of each odd-numbered year. The committee shall organize by selecting a chairman, vice chairman, secretary, and treasurer and by adopting rules and modes of procedure. The party's bylaws must be filed with the secretary of state. The officers elected need not be members of the committee, but they shall become voting members of the committee after their election. Within thirty days following the state committee's organization, the newly elected chairman shall notify the secretary of state of the names of the party officers selected ~~and the names and addresses of the party's district chairmen~~. These officers, with any other persons provided for by the party's bylaws and as the state committee designates, constitute the executive committee of the state committee. If the office of chairman becomes vacant, the vice chairman holds the office until the next regular election for the office or until a new chairman is selected by the state committee for the balance of the term, whichever occurs first. A vacancy in an office of the state committee, other than chairman and a party district chairman, must be filled upon a majority vote of the state committee. The chairman of the state committee may temporarily fill any vacancy existing on the state committee until the state committee convenes to fill the vacancy. The secretary of state must be notified of any changes in membership of the state's committee officers ~~or the party's district chairmen~~.

**SECTION 12. AMENDMENT.** Subsection 1 of section 16.1-06-15 of the North Dakota Century Code is amended and reenacted as follows:

1. All electronic voting systems used in this state must be tested according to guidelines established by the secretary of state and as follows to ascertain whether the automatic tabulating equipment will accurately count the votes cast for all offices and measures. The testing must be conducted prior to each election at which the system will be used. The testing must be done by the county auditor or county auditor's designee, and after each test, the testing materials and any preaudited ballots used during the test must be sealed and retained in the same manner as election materials after an election.

**SECTION 13. AMENDMENT.** Section 16.1-07-08 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-07-08. Delivering ballots - Envelopes accompanying - StatementAffidavit on envelope - Challenging electors voting by absentee ballot - Inability of elector to sign name.**

1. Upon receipt of an application for an official ballot properly filled out and duly signed, or as soon thereafter as the official ballot for the precinct in which the applicant resides has been prepared, the county auditor, city auditor, or business manager of the school district, as the case may be, shall send to the absent voter by mail, at the expense of the political subdivision conducting the election, one official ballot, or personally deliver the ballot to the applicant or the applicant's agent, which agent may not, at that time, be a candidate for any office to be voted upon by the absent voter. The agent shall sign the agent's name before receiving the ballot and deposit with the auditor or business manager of the school district, as the case may be, authorization in writing from the applicant to receive the ballot or according to requirements set forth for signature by mark. The auditor or business manager of the school district, as the case may be, may not provide an absent voter's ballot to a person acting as an agent who cannot provide a signed, written authorization from an applicant. No person may receive compensation, including money, goods, or services, for acting as an agent for an elector, nor may a person act as an agent for more than four electors in any one election. A voter voting by absentee ballot may not require the political subdivision providing the ballot to bear the expense of the return postage for an absentee ballot.
  
2. If there is more than one ballot to be voted by an elector of the precinct, one of each kind must be included and a secrecy envelope and a return envelope must be enclosed with the ballot or ballots. The front of the return envelope must bear the official title and post-office address of the officer supplying the voter with the ballot and upon the other side a printed voter's affidavit in substantially the following form:

Precinct \_\_\_\_\_

Name \_\_\_\_\_

Residential Address \_\_\_\_\_

City \_\_\_\_\_ ND Zip Code \_\_\_\_\_

Under penalty of possible criminal prosecution for making a false statement, I swear that I reside at the residential address provided above, that I have resided in my precinct for at least thirty days next preceding the election, and this is the only ballot I will cast in this election.

Applicant's Signature \_\_\_\_\_

Date \_\_\_\_\_

If the absent voter is unable to sign the voter's name, the voter shall mark (X) or use the applicant's signature stamp on the ~~statement~~affidavit in the presence of a disinterested individual. The disinterested individual shall print the name of the individual marking the X or using the signature stamp below the X or signature stamp and shall sign the disinterested individual's own

name following the printed name together with the notation "witness to the mark".

3. Each individual requesting an absent voter's ballot under this chapter must be provided a set of instructions, prescribed by the secretary of state, sufficient to describe the process of voting by absent voter's ballot. The voting instructions must contain a statement informing the individual that the individual is entitled to complete the absent voter's ballot in secrecy.
4. Each individual requesting an absent voter's ballot under this chapter who cannot read the English language or who because of blindness or other disability is unable to mark the voter's ballot, upon request, may receive the assistance of any individual of the voter's choice, other than the voter's employer, an officer or agent of the voter's union, a candidate running in that election, or a relative of a candidate as described in subsection 2 of section 16.1-05-02, in marking the voter's ballot.

**SECTION 14. AMENDMENT.** Section 16.1-07-09 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-07-09. Canvassing of mailed absent voter's ballots received late.**

In the case of congressional, state, county, city, or school district elections, if an envelope postmarked or otherwise officially marked by the United States postal service or other mail delivery system before the date of election and containing an absent voter's ballot is received by the officer too late to be forwarded to the proper voting precinct in time to be tabulated, the ballot must be tallied by the canvassing board of the county, the governing body of the city, or the school board of the school district, as the case may be, at the time the returns are canvassed. Any envelope without a postmark or other official marking by the United States postal service or other mail delivery system or with an illegible postmark or other official marking and containing an absentee voter's ballot must be received by mail by the proper officer ~~within two days after the election to be canvassed and counted prior to the meeting of the canvassing board.~~ An absent voter may personally deliver the absent voter's ballot to the appropriate officer's office at any time before five p.m. on the day before the election. Any envelope containing an absent voter's ballot with a postmark or official date stamp on the day of election or thereafter may not be tallied with the ballots timely submitted for the election. Before forwarding any ballot to a canvassing board pursuant to this section, the officer forwarding the ballot shall print the date of receipt on the envelope. Upon receipt, the canvassing board shall determine that the elector was qualified to vote in that precinct, that the elector did not previously vote in that precinct on the date of the election, and that the signatures on the absentee ballot application and the voter's affidavit were signed by the same person before allowing the ballot to be tallied.

**SECTION 15. AMENDMENT.** Section 16.1-07-10 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-07-10. Care and custody of ballot.**

Upon receipt of an envelope containing the absent voter's ballot, the proper officer immediately shall attach the ~~written~~ application of the absent voter and file the ballot with other absentee ballots from the same precinct. Before delivering the absentee ballots to the precinct, the proper officer shall package the ballots in a manner so the ballots are sealed securely. The package must be endorsed with the name of the proper voting precinct, the name and official title of the officer, and the words "This

package contains an absent voter's ballot and must be opened only ~~on election day at the polls while the polls are open~~ according to the processing provisions of section 16.1-07-12." The officer shall keep the package safely in the officer's office until it is delivered by the officer as provided in this chapter.

**SECTION 16. AMENDMENT.** Section 16.1-07-11 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-07-11. Submitting ballot to inspector of elections.**

If the envelope containing the absent voter's ballot is received by the county auditor, auditor or clerk of the city, or business manager of the school district, as the case may be, prior to that person's delivery of the sealed package containing the official ballots to the inspector of elections of the precinct in which such absent voter resides, such ballot, after having been enclosed with the application in an envelope as required by section 16.1-07-10, must be enclosed in such package and delivered therewith to the inspector of the precinct. If the official ballots for the precinct have been delivered to the election inspector at the time of receipt by the proper officer of the absent voter's ballot, then the officer ~~shall immediately mail the same postage prepaid to the election inspector or the officer or the officer's deputy may designee~~ shall personally deliver it to the inspector prior to the close of the polls on election day. Any absent voter's ballot sent to the wrong precinct by the official whose duty it is to forward such ballots to the precincts, or any absent voter's ballot received by the inspector from the appropriate officer too late to be counted at the precinct, must be returned to the official by the election inspector, and must be tallied by the county canvassing board, the governing body of the city, or the school board, as the case may be, with other absent voters' ballots received too late to be ~~forwarded to the precinct~~ counted on election day.

**SECTION 17. AMENDMENT.** Section 16.1-07-12 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-07-12. Opening ballot - Voting or rejecting - Depositing in ballot box - Preserving.**

At any time beginning on the day before election day and the closing of the polls on election day, the election clerks and board members of the relevant precinct first shall ~~open the outer envelope and compare the signature on the application for an absent voter's ballot with the signature on the statement~~ voter's affidavit provided for in section 16.1-07-08 to ensure the signatures correspond. If the ~~judges find that the statement is sufficient and that the signatures correspond, and that the applicant is then a duly qualified elector of the precinct and has not voted at the election, they shall open the absent voter's envelope in a manner as not to destroy the statement~~ affidavit thereon. They shall take out the secrecy envelope with the ballot or ballots contained therein without unfolding the same, or permitting the same to be opened or examined, ~~and after initialing the same as other ballots are initialed, they shall deposit the ballot in the proper ballot box and show~~ indicate in the pollbook of the election that the elector has voted. The election board members not participating in the comparing of signatures and entering voters into the pollbook shall remove the ballot or ballots from the secrecy envelope, unfold and initial the same, and deposit in the proper ballot box for tabulation. The votes from these cast ballots may not be tallied and the tabulation reports may not be generated until the polls have closed on election day. If the ~~statement~~ affidavit on the outer envelope of a returned absentee ballot is found to be insufficient, or that the signatures on the application and affidavit do not correspond, or that the applicant is not then a duly qualified elector of the precinct, the vote may not be allowed, but without opening the absent voter's

envelope, the election inspector or election judge shall mark across the face thereof "rejected as defective" or "rejected as not an elector", as the case may be. These rejected ballots are then turned over to the county canvassing board for final determination of eligibility. The subsequent death of an absentee voter after having voted by absentee ballot does not constitute grounds for rejecting the ballot.

**SECTION 18. AMENDMENT.** Section 16.1-07-12.1 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-07-12.1. Absentee ballot precinct - Election board appointment - Ballot counting.**

1. For any primary, general, or special statewide, district, or county election, the board of county commissioners may create a special precinct, known as an absentee ballot precinct, for the purpose of counting all absentee ballots cast in an election in that county. The election board of the absentee ballot precinct must be known as the absentee ballot counting board. The county auditor shall supply the board with all necessary election supplies as provided in chapter 16.1-06.
2. If the board of county commissioners chooses to establish an absentee ballot precinct according to this section, the following provisions apply:
  - a. The county auditor shall appoint the absentee ballot counting board that consists of one independent representative to act as the inspector and an equal number of representatives from each political party represented on an election board in the county, as set forth in section 16.1-05-01, to act as judges. Each official of the board shall take the oath required by section 16.1-05-02 and must be compensated as provided in section 16.1-05-05.
  - b. The county auditor shall have the absentee ballots delivered to the inspector of the absentee ballot counting board with the election supplies, or if received later, then prior to the closing of the polls.
  - c. The absentee ballot counting board shall occupy a location designated by the county auditor which must be open to any individual for the purpose of observing the counting process.
  - d. The absentee ballots must be opened and handled as required in section 16.1-07-12. ~~The absentee ballot counting board may commence counting the absentee ballots at the same time as any precinct within the county, city, or legislative district opens its polls. As soon as all the polls in the county, city, or legislative district close and the count is completed, the inspector shall announce publicly the results. The county auditor shall designate a location for the closing, counting, and canvassing process under chapter 16.1-15, which location must be open to any person for the purpose of observing.~~ The board shall comply with the requirements of sections 16.1-15-04 through 16.1-15-12, as applicable.

**SECTION 19. AMENDMENT.** Subsection 1 of section 16.1-09-03 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~A~~~~n~~The name of the business or employer and an identification of the principal source of income, defined in the state income tax return as "principal occupation", of both the candidate or appointee and that person's spouse.

**SECTION 20. AMENDMENT.** Section 16.1-10-03 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-10-03. Political badge, button, or insignia at elections.**

~~On the day of an election, no person~~No individual may buy, sell, give, or provide any political badge, button, or any insignia ~~to be worn at or about the polls on that day within a polling place or within one hundred feet [30.48 meters] from the entrance to the room containing the polling place while it is open for voting.~~ No such political badge, button, or insignia may be worn ~~at or about the polls on any election day within that same area while a polling place is open for voting.~~

**SECTION 21. AMENDMENT.** Section 16.1-11-05 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-11-05. Secretary of state to give notice to county auditor of officers to be nominated.**

Between the first day of March and the first day of April in each primary election year, the secretary of state shall ~~cause to be delivered to~~notify the county auditor of each county ~~a notice specifying~~regarding all the officers to be nominated in that county at the next primary election. This same information shall be made available to the public by the secretary of state at that time. The publication of the sample ballot by the county auditor constitutes the notice of the secretary of state in regard to the officers and candidates to be voted upon at the primary election.

**SECTION 22. AMENDMENT.** Section 16.1-11-20 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-11-20. Certified list of nominees transmitted to county auditor by secretary of state.**

At least fifty-five days before any primary election, the secretary of state shall electronically transmit to each county auditor a certified list containing the names and post-office addresses of each person for whom nomination papers have been filed in the secretary of state's office and who are entitled to be voted for at the primary election. A designation of the office for which each is a candidate, and if applicable, the party or principle represented by each must be included.

**SECTION 23. AMENDMENT.** Section 16.1-11-22 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-11-22. Primary election ballot - Form - Voters to vote for candidates of only one political party.**

At the primary election there may be only one ballot for all parties or principles. The ballot must be in the following form:

1. The ballot must be entitled the "consolidated primary election ballot".
2. Each political party or principle having candidates at the primary election must have a separate column on the ballot.
3. At the head of each column must be printed the name of the political party or principle which it represents.

4. In each column below the party or principle title must be printed: "You may vote for the candidates of only one political party at the primary election. If you cast votes in more than one party column and vote for candidates of more than one political party, your political party ballot will be rejected."
5. Immediately below the warning against voting for candidates of more than one political party must be printed: "To vote for the candidate of your choice, you must darken the oval opposite the name of the candidate. To vote for a person whose name is not printed on the ballot, write that person's name in the blank space provided for that purpose and darken the oval opposite the space provided."
6. The offices specified in section 16.1-11-26 must be arranged in each column with the name of each office in the center of each political party column at the head of the names of all the aspirants for the office.
7. Immediately under the name of each office must be printed: "Vote for no more than \_\_\_\_\_ name (or names)."
8. Immediately preceding and on the same line as the name of each aspirant must be printed an oval in which the voter is to mark the voter's choice by darkening the oval next to the name of the candidate chosen.
9. The political party or principle which cast the largest vote for governor at the most recent primary election at which the office of governor was voted upon must have the left-hand column, and the political party or principle casting the next largest vote must have the next column, and so on.

The judges and the inspector of elections shall inform each elector at the primary, before voting, that if the voter votes for candidates of more than one political party the voter's political party ballot will be rejected.

**SECTION 24. AMENDMENT.** Section 16.1-11.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-11.1-01. Counties may conduct mail ballot elections - Polling places - Records.**

1. The board of county commissioners of a county may conduct an election by mail ballot. The mail ballot election must include city elections administered by the county auditor and may include any other election administered by the county auditor pursuant to an agreement with the governing body of a political subdivision within the county. The board shall designate one or more polling places in the county to be open on the day of the election for voting in the usual manner. The county auditor shall place a notice at all polling places in the county used at the last statewide election which states the location of the polling places open for the election. The county auditor shall keep a record of each mail ballot provided to qualified electors and provide to the election board at each polling place open on the day of the election a list of every person who applied for a mail ballot.
2. The board of county commissioners of a county may conduct an election partially by mail ballot. If the board of county commissioners chooses to conduct an election partially by mail ballot, the commission may use mail ballots for any precinct in which fewer than four hundred votes were cast for

the office of governor at the last general election at which that office was on the ballot.

**SECTION 25. AMENDMENT.** Section 16.1-11.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-11.1-03. Mail ballot distribution.**

The county auditor shall mail an official mail ballot with a return identification envelope, voter's affidavit, and instructions ~~sufficient to describe the voting process to each qualified elector who returns a properly completed application form to the auditor by five p.m. on the fourth day before the election. The voting instructions must contain a statement informing the elector that the elector is entitled to complete the mail ballot in secrecy. The auditor shall mail the ballot by first class mail, addressed to the address of the elector completing and returning a mail ballot application, and placed in an envelope that is prominently marked "Do Not Forward". The return identification envelope must contain the following form:~~

I, \_\_\_\_\_, under penalty of possible criminal prosecution for  
(please print name)

~~making a false statement, certify that I am or will be a qualified elector for the election and have not and will not vote more than one ballot in this election. I also understand that failure to complete the information below will invalidate my ballot.~~

\_\_\_\_\_  
(Signature of Voter)

\_\_\_\_\_  
(Mailing Address)

\_\_\_\_\_, North Dakota \_\_\_\_\_  
(City) (Zip Code)

according to section 16.1-07-08.

**SECTION 26. AMENDMENT.** Section 16.1-11.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-11.1-06. Canvass of votes - ~~Special election board~~Mail ballot precinct.**

The county auditor shall appoint a special mail ballot precinct election board for the purpose of counting mail ballots in the same manner as prescribed in section 16.1-07-12.1. The board may begin scanning the ballots ~~after the polls open on the day of the election but may not total the results until the closing time of the polls at any time beginning on the day before election day and the closing of the polls on election day. Results from the mail ballot precinct may be counted, canvassed, or released under chapter 16.1-15 as soon as any precinct within the county, city, or legislative district closes its polls on the day of the election. The county auditor shall designate a location for the closing, counting, and canvassing process under chapter 16.1-15, which location must be open to any person for the purpose of observing. The board shall comply with the requirements of sections 16.1-15-04 through 16.1-15-12 as applicable.~~ A county conducting a mail ballot election constitutes one voting area, and



ballots need not be sorted according to precinct or ward unless necessary for the administration of the election.

**SECTION 27. AMENDMENT.** Subsection 1 of section 16.1-11.1-07 of the North Dakota Century Code is amended and reenacted as follows:

1. The ballot is returned in the return identification envelope with a postmark or official date stamp of at least the day before the election and received prior to the meeting of the canvassing board;

**SECTION 28. 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 ~~certify~~electronically transmit a certified list to each county auditor the names and addresses of the persons nominated for statewide office according to this chapter as shown on the certificates of nomination filed in the secretary of state's office.

**SECTION 29. AMENDMENT.** Section 16.1-13-03 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-13-03. Secretary of state to give notice to county auditor of officers to be elected.**

Not later than seventy days prior to the date of election, the secretary of state shall ~~direct and cause to be delivered~~electronically transmit to the county auditor of each county a notice specifying each officer to be chosen at the next general election. This same information shall be made available to the public by the secretary of state at that time. The publication of the sample ballot by the county auditor constitutes the notice of the secretary of state in regard to the offices and candidates to be voted upon at the general election.

**SECTION 30. AMENDMENT.** Section 16.1-15-04 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-15-04. Three canvass reports prepared by election board - One for county auditor and one for each political party.**

The election board shall generate at least three canvass reports from the electronic voting system. The ballots may not be sealed, nor may the three canvass reports be signed, by the election board or poll clerk until the counts in the poll clerks' books and in the canvass reports all show the same totals for ballots cast. A signed canvass report is to be given to each judge so that the political parties have a record of the votes cast.

In the case of the absentee ballot precinct as authorized in section 16.1-07-12.1, early voting precincts as authorized in section 16.1-07-15, and mail ballot precinct as authorized in section 16.1-11.1-06, if the work of the election board is completed prior to close of the polls on election day, the election board shall create and sign a statement consisting of a reconciliation of the number of voters recorded in the pollbook and the number of ballots processed through the tabulators. The voting system shall then be secured in a manner prescribed by the county auditor that will protect the system and ballots from tampering. Prior to generating the canvass reports from one of these three types of precincts, an election judge representing

each political party, or two election judges in the case of an election that does not include a political party contest, shall verify that the system and ballots remain secure and the statement created by the election board is still accurate.

**SECTION 31. AMENDMENT.** Section 16.1-15-08 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-15-08. Wrapping and returning of ballots to county recorder.**

After generating the reports and poll lists provided for in section 16.1-15-06 for delivery to the county auditor, the election board shall cause the ballots containing lawful write-in votes cast at the election to be placed in a suitable wrapper to form a complete wrapper for the ballots. All ballots without write-in votes shall be wrapped in a similar manner. The ballots and wrappers must then be tightly secured at the outer end to completely envelop and hold the ballots together. Ballots that are void must be secured in a separate wrapper and must be marked "void". Ballots that are spoiled must be separately secured and marked "spoiled". In sealing ballots, the various classes of ballots must be kept separate. Each wrapper must be endorsed with the names or numbers of the precincts and the date on which the election was held. The wrappers must be sealed securely in a manner prescribed by the 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 any electronic voting system or counted by an electronic counting machine must be sealed and returned as provided in this section.

**SECTION 32. AMENDMENT.** Section 16.1-15-21 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-15-21. Primary election statement prepared by county canvassing board - Contents.**

The county canvassing board, upon canvassing the returns of a primary election, shall prepare a ~~statement~~ an abstract signed by the members of the board and filed in the office of the county auditor. The ~~statement~~ abstract must contain all of the following:

1. The names of all candidates voted for at the primary election with the number of votes received by each and for what office. The ~~statement~~ abstract must be made separately for each political party or principle.
2. The names of the persons or candidates of each political party or principle who receive the highest number of votes for the respective offices. If more than one person is required to be elected to a given office at the next ensuing general election, there must be included in the ~~statement~~ abstract the names of so many of the candidates of the party receiving the next highest number of votes for that office as there are persons to be elected to the office at said ensuing general election. The ~~statement~~ abstract must be made separately for each political party.

3. The total number of ballots cast at the primary election.

A separate ~~statement~~abstract of the votes cast must be transmitted to the secretary of state according to reporting instructions specified by the secretary of state.

**SECTION 33. AMENDMENT.** Section 16.1-15-22 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-15-22. County auditor to transmit abstract of votes to secretary of state after primary election.**

The county auditor of each county shall provide to the secretary of state ~~athe~~certified abstract ~~detailed in section 16.1-15-21~~, under separate political designation or principle, or no-party designation, as the case may be, of the total number of votes cast in the auditor's county and the votes cast for every candidate for nomination according to reporting instructions specified by the secretary of state. The abstract must also include the total number of votes cast for initiated or referred measures and constitutional amendments. The certified abstract must be in the possession of the secretary of state before four p.m. on the ~~tenth~~eighth day after the primary election.

**SECTION 34. AMENDMENT.** Section 16.1-15-25 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-15-25. County auditor to forward abstract of votes of general election to secretary of state - Contents - Abstract for presidential electors.**

Within ~~teneight~~ days and before four p.m. on the ~~tenth~~eighth day following any general election, the county auditor of each county shall provide to the secretary of state a certified abstract of the votes cast in the county at the election according to the reporting instructions specified by the secretary of state.

**SECTION 35. AMENDMENT.** Section 16.1-15-26 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-15-26. Memorandum Notification of date of receiving returns in secretary of state's office.**

~~A memorandum~~An electronic notification of the date of reception of all returns of votes in the secretary of state's office must be made to each county auditor.

**SECTION 36. AMENDMENT.** Section 16.1-15-27 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-15-27. Abstract of votes - Secretary of state to record - Failure of county auditor to send - Messenger dispatched.**

Upon receipt of the certified abstract of votes from the county auditors as provided in section 16.1-15-25, the secretary of state shall record the result of the election by counties and shall file and carefully preserve the certified ~~statements~~abstracts received from the county auditors. If no certified ~~statement~~abstract is received by the secretary of state from the county auditor of any county prior to the time specified for the meeting of the state canvassing board, the secretary of state shall dispatch a special messenger to obtain the ~~statement~~abstract at the expense of the county. Upon demand, the county auditor shall make and deliver the required ~~statement~~abstract to the special messenger who shall deliver it to the secretary of state to be recorded and filed as provided in this section. The messenger shall receive the same mileage expense as other state officers and employees. The state

treasurer shall present a bill for the amount audited against the county failing to send returns as provided in this section, and the bill must be audited by the board of county commissioners of the county and paid by the county treasurer to the state treasurer.

**SECTION 37. AMENDMENT.** Section 16.1-15-33 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-15-33. State canvassing board - Membership - Oath - Quorum - Compensation.**

The clerk of the supreme court, the secretary of state, the state treasurer, and the chairman, or chairman's designee, of the state committee of the two political parties which cast the highest vote for governor at the last general election at which a governor was elected shall constitute the state canvassing board. The duties of the state canvassing board are ~~ministerial, mandatory, and nondiscretionary~~ and consist of ~~canvassing the results~~ examining the returns of votes cast at the elections received from the various counties, verifying the computed final results in any reasonable manner adopted by the board and which may incorporate the use of any electronic technology or system approved by the secretary of state, and certifying the results on the basis of the canvass. After taking the oath required of civil officers, the board shall proceed to canvass publicly the election returns made by the county auditors. Three members of the board constitute a quorum and may make the canvass provided for in this chapter and certify to the result thereof. If less than a quorum attend on the day appointed for a meeting of the board, the members attending may summon other state officers until there is a sufficient number to constitute a quorum. Any other state officer, upon being notified by the members of the board, shall attend without delay and act as a member of the board. Members of the board may be compensated only for their expenses incurred in attending meetings in accordance with sections 44-08-04 and 54-06-09. The compensation must be paid from the appropriation to the secretary of state.

**SECTION 38. AMENDMENT.** Section 16.1-15-37 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-15-37. Examination of abstracts by state canvassing board - Messenger dispatched to county when error discovered.**

After the state canvassing board is formed, it shall examine the certified abstracts of the county canvassing boards and verify the computed final results as provided in section 16.1-15-33 and if it appears that:

1. Any material mistake has been made in the computation of votes cast for any person; or
2. The county canvassing board in any county has failed to canvass the votes or any part thereof cast in any precinct in its county,

the board may dispatch a messenger to the county auditor of the county, at the expense of the county, with the board's requirement in writing to the county auditor to certify the fact concerning the mistake or the reason why the votes were not canvassed. The county auditor, to whom the requirement is delivered, shall make a true and full answer thereto under the county auditor's hand and official seal and shall deliver the answer with all convenient dispatch to the secretary of state.

**SECTION 39. AMENDMENT.** Section 16.1-15-39 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-15-39. Disagreements in canvassing returns by canvassing board - Disregarding technicalities, misspelled words, and abbreviations.**

In canvassing the returns and verifying the computed final results received from the various counties, a majority of the members of the state canvassing board shall decide all matters of disagreement. The board shall disregard all technicalities, misspelling, the use of initial letters, and the abbreviations of the names of candidates if it can be ascertained from the returns for whom the votes were intended.

**SECTION 40. AMENDMENT.** Section 16.1-15-40 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-15-40. ~~Statement~~Abstract prepared by state canvassing board for primary election - Contents - Signing - Candidate notified of nomination.**

The state canvassing board shall prepare the ~~statement~~certified abstract required by subsections 1, 2, and 3 of section 16.1-15-21 for primary elections. The certificate must be signed by the members of the board and filed in the office of the secretary of state. Upon completion of the canvass, the secretary of state shall mail to each candidate nominated a notice of the candidate's nomination stating that the candidate's name will be placed upon the official ballot to be voted for at the ensuing general election. If the election results indicate that any candidate is entitled to a recount or to demand a recount pursuant to section 16.1-16-01, the secretary of state may not prepare or deliver the notice of nomination until the time to demand a recount has expired, or the recount results have been determined and the winner declared, whichever is later. The secretary of state shall file a copy of the findings of the board and shall publish those findings in a newspaper printed in Burleigh County.

**SECTION 41. AMENDMENT.** Section 16.1-15-41 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-15-41. Statements of general or special election prepared by state canvassing board - Contents.**

Upon receiving the certified abstracts on file with the secretary of state, the state canvassing board shall proceed publicly to examine and make statements of the whole number of votes cast at any general or special election for all state or district offices. The statements must show the names of the ~~persons~~individuals for whom the votes were cast for the offices and the whole number of votes for each, distinguishing the several districts and counties in which they were cast.

**SECTION 42. AMENDMENT.** Section 16.1-15-44 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-15-44. Secretary of state to record statement of general or special election, prepare certificates of election, publish ~~statement~~abstract.**

After receiving each certified statement and determination made by the state canvassing board, the secretary of state shall record the same in the secretary of state's office and shall prepare, and transmit to each of the ~~persons~~individuals declared to be elected, a certificate of election as provided in this chapter. If the election results indicate that any candidate is entitled to a recount or to demand a recount pursuant to section 16.1-16-01, the secretary of state may not prepare or deliver the certificate of election until the time to demand a recount has expired, or the recount results have been determined and the winner declared, whichever is later.

The secretary of state shall cause a copy of the certified ~~statement~~abstract and determination to be published in the official newspaper of Burleigh County.

**SECTION 43. AMENDMENT.** Section 16.1-15-48 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-15-48. Canvassing returns of constitutional amendment or other proposition - Certified ~~statement~~abstract of result - Contents.**

For the purpose of canvassing and ascertaining the result of the votes cast at any election upon any proposed amendment to the constitution, or any other proposition submitted to a vote of the people, the state canvassing board shall proceed to examine the ~~statements~~abstracts received by the secretary of state from the county auditors to ascertain and determine the result. The board shall certify a statement of the whole number of votes cast for and the whole number of votes cast against an amendment or proposition, and it shall determine whether the amendment or proposition has been approved and ratified by a majority of the electors voting thereon, and a certificate of that determination must be prepared and subscribed on the statement.

**SECTION 44. AMENDMENT.** Section 40-38-01 of the North Dakota Century Code is amended and reenacted as follows:

**40-38-01. Public library and reading room - Establishment - Election.**

The governing body of any city or county upon petition of not less than fifty-one percent of the qualified electors of the city or county as determined by the total number of votes cast at the last general election or upon a majority vote of the qualified electors thereof voting on the question shall establish and maintain public library service within its geographic limits by means of a public library and reading room or other public library service, either singly or in cooperation with the state library, or with one or more cities or counties, or by participation in an approved state plan for rendering public library service under the Library Services and Construction Act [20 U.S.C. 351-358], and acts amendatory thereof. Such question shall be submitted to the qualified electors upon resolution of the governing body or upon the petition of not less than twenty-five percent of that number of qualified electors of the city or county that voted at the last general election, filed with the governing body not less than ~~sixty~~sixty-nine days before the next regular election. Library service may be discontinued within any city or county by any of the methods by which library services may be established, except that once established, such service shall not be discontinued until after it has been in operation for at least five years from the date of establishment.

**SECTION 45. AMENDMENT.** Section 61-04.1-30 of the North Dakota Century Code is amended and reenacted as follows:

**61-04.1-30. Abolishment of weather modification authority by election.**

When a petition signed by not less than twenty percent of the qualified electors of the county, as determined by the vote cast for governor in the last preceding gubernatorial election, requesting an election upon the abolishment of a weather modification authority as created in sections 61-04.1-27 and 61-04.1-29 is presented to the board of county commissioners, not later than ~~forty-five~~sixty days prior to the next countywide election, the board of county commissioners shall submit the question to the qualified electors of the county at the next countywide election. Upon approval by a majority of the votes cast on the question, the board of county

commissioners shall abolish the weather modification authority as of December thirty-first following the election. All unexpended funds remaining in the name of the weather modification authority, after all proper bills and expenses have been paid, shall be deposited in the general fund of the county.

Approved April 20, 2011

Filed April 20, 2011

## CHAPTER 153

### SENATE BILL NO. 2256

(Senators Holmberg, Dever)  
(Representatives Grande, Streytle)

AN ACT to create and enact a new section to chapter 16.1-05 of the North Dakota Century Code, relating to election observers.

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

**SECTION 1.** A new section to chapter 16.1-05 of the North Dakota Century Code is created and enacted as follows:

##### Election observers.

1. Election observers must be allowed uniform and nondiscriminatory access to all stages of the election process, including the certification of election technologies, early voting, absentee voting, voter appeals, vote tabulation, and recounts.
2. An election observer must wear a badge with the name of the individual and the name of the organization the individual is representing. An election observer may not wear any campaign material advocating voting for or against a candidate or for or against any position on a question on the ballot. An election observer may not interfere with any voter in the preparation or casting of the voter's ballot or hinder or prevent the performance of the duties of any election official.

Approved April 1, 2011  
Filed April 1, 2011



## CHAPTER 154

### SENATE BILL NO. 2120

(Government and Veterans Affairs Committee)  
(At the request of the Commission on Uniform State Laws)

AN ACT to create and enact sixteen new sections to chapter 16.1-07 of the North Dakota Century Code, relating to the adoption of the Uniform Military and Overseas Voters Act; to amend and reenact sections 16.1-07-01 and 16.1-07-05 of the North Dakota Century Code, relating to absentee voting; and to repeal sections 16.1-07-03 and 16.1-07-08.1 of the North Dakota Century Code, relating to absent voter ballots.

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

**SECTION 1. AMENDMENT.** Section 16.1-07-01 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-07-01. Absent voter ~~Who may vote.~~**

- ~~1. Any qualified elector of this state, including an individual who is in the armed forces of the United States, is in the merchant marine of the United States, or is a United States citizen living outside the United States who resided in this state immediately prior to the individual's departure from the United States, may vote an absent voter's ballot at any general, special, or primary state election, any county election, or any city or school district election.~~
- ~~2. A citizen of the United States who is eighteen years of age or older, has never lived in the United States, and whose parent is a qualified elector of the state may vote absentee in this state pursuant to this chapter if the individual:~~
  - ~~a. Does not maintain a domicile;~~
  - ~~b. Is not registered to vote in any other state, territory, or possession of the United States;~~
  - ~~c. Is not voting in any other state, territory, or possession of the United States; and~~
  - ~~d. Possesses a valid passport or card of identity and registration issued under the authority of the secretary of state of the United States.~~

~~Such an elector may vote only in federal elections, which means any election held solely or in part for the purpose of electing or nominating any candidate for the office of president, vice president, presidential elector, member of the United States senate, or member of the United States house of representatives.~~

- ~~3. An elector who votes by absentee ballot may not vote in person at the same election.~~

**SECTION 2. AMENDMENT.** Section 16.1-07-05 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-07-05. Time for applying for ballot - ~~Applications and voting for uniformed citizens and for citizens living outside the United States~~ - Emergency situations - Sufficient time for application and ballot return.**

1. At any time in an election year, any qualified elector may apply to the county auditor, the auditor or clerk of the city, or the business manager of the school district, as the case may be, by personal delivery, facsimile, electronic mail or otherwise, for an official ballot to be voted at that election. A voter may obtain an application form approved by the secretary of state, for an absent voter's ballot for a general, special, primary, ~~or county,~~ city, or school election from ~~either the secretary of state, a county auditor or a city auditor, a candidate, a political party, or a political committee.~~ The application form must include a space for the applicant to indicate whether the application is for all statewide elections in the calendar year or only for the election that is immediately after the date of the application.
2. ~~An applicant who is a qualified elector and on active duty as a member of the United States armed forces or the United States merchant marine may receive an absentee ballot by mail, facsimile, or electronic mail. In the event that returning the voted ballot by mail is not practicable, qualified electors meeting the stated criteria of this subsection may return a voted ballot and other required documents to the county auditor by means of facsimile transmission or electronic mail. To return a voted ballot and other required documents by electronic mail, the eligible voter must have access to the technology to scan the documents, save the documents in a secure format approved by the secretary of state, and return the documents as an electronic mail attachment directly to the electronic mail address assigned by the auditor, clerk, or business manager for that purpose prior to midnight in the voter's county of residence on the day before the election. The secretary of state shall develop written guidelines relating to security measures for voted ballots returned by electronic mail.~~
3. ~~Spouses, children, or other dependents of active duty uniformed service members who are qualified electors and stationed at a location other than that individual's voting residential address are granted the same absentee voting rights as the individual's spouse, parent, or guardian has under subsection 2.~~
4. ~~An applicant who is a qualified elector living outside the United States may receive an absentee ballot by mail, facsimile, or electronic mail. If returning the voted ballot by mail is not practicable, a qualified elector may return a voted ballot and other required documents to the county auditor by means of facsimile transmission or electronic mail. The elector must have access to the technology to scan the documents, save the documents in a secure format approved by the secretary of state, and return the documents as an electronic mail attachment directly to the electronic mail address assigned by the auditor, clerk, or business manager for that purpose before midnight in the voter's county of residence on the day before the election. The secretary of state shall develop written guidelines relating to security measures for voted ballots returned by electronic mail.~~
5. No auditor or clerk may issue ballots for absentee voters on the day of the election except to ~~persons~~individuals prevented from voting in person on the

day of the election due to an emergency. ~~A person~~An individual requesting an absentee ballot on the day of the election due to an emergency must do so through an agent as set forth in this chapter. An agent may represent only one ~~person~~individual. The absentee ballot must be returned to the county auditor's office by four p.m. on the day of the election.

- 6-3. A completed application must be submitted to the appropriate election official in a timely manner so as to allow the applicant to receive, complete, and mail the absent voter's ballot before the day of the election.

**SECTION 3.** A new section to chapter 16.1-07 of the North Dakota Century Code is created and enacted as follows:

**Definitions.**

In sections 3 through 18 of this Act:

1. "Covered voter" means:

- a. A uniformed-service voter whose voting residence is in this state;
- b. An overseas voter who, before leaving the United States, was last eligible to vote in this state and, except for a state residency requirement, otherwise satisfies this state's voter eligibility requirements;
- c. An overseas voter who, before leaving the United States, would have been last eligible to vote in this state had the voter then been of voting age and, except for a state residency requirement, otherwise satisfies this state's voter eligibility requirements; or
- d. Any other overseas voter who was born outside the United States and, except for a state residency requirement, otherwise satisfies this state's voter eligibility requirements, if:
  - (1) The last place where a parent or legal guardian of the voter was, or under this Act would have been, eligible to vote before leaving the United States is within this state; and
  - (2) The voter has not previously registered to vote or voted in any other state.

2. "Dependent" means an individual recognized as a dependent by the applicable uniformed service.

3. "Military-overseas ballot" means:

- a. A federal write-in absentee ballot described in the Uniformed and Overseas Citizens Absentee Voting Act [103, 42 U.S.C. 1973ff-2];
- b. A ballot specifically prepared or distributed for use by a covered voter in accordance with sections 4 through 18 of this Act; or
- c. A ballot cast by a covered voter in accordance with sections 4 through 18 of this Act.

4. "Overseas voter" means a United States citizen who is outside the United States.
5. "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.
6. "Uniformed service" means:
  - a. Active and reserve components of the army, navy, air force, marine corps, and coast guard of the United States;
  - b. The merchant marine, the commissioned corps of the public health service, and the commissioned corps of the national oceanic and atmospheric administration of the United States; and
  - c. The national guard and state militia units.
7. "Uniformed-service voter" means an individual who is qualified to vote and is:
  - a. A member of the active or reserve components of the army, navy, air force, marine corps, or coast guard of the United States who is on active duty;
  - b. A member of the merchant marine, the commissioned corps of the public health service, or the commissioned corps of the national oceanic and atmospheric administration of the United States;
  - c. A member of the national guard or state militia unit who is on activated status; or
  - d. A spouse or dependent of a member referred to in this subsection.

**SECTION 4.** A new section to chapter 16.1-07 of the North Dakota Century Code is created and enacted as follows:

**Elections covered.**

The voting procedures in sections 3 through 18 of this Act apply to:

1. A general, special, or primary election for federal office.
2. A general, special, or primary election for statewide or state legislative office or state ballot measure.
3. A general, special, or primary election for political subdivision office or political subdivision ballot measure.

**SECTION 5.** A new section to chapter 16.1-07 of the North Dakota Century Code is created and enacted as follows:

**Role of secretary of state.**

1. The secretary of state is responsible for implementing sections 3 through 18 of this Act and the state's responsibilities under the Uniformed and Overseas Citizens Absentee Voting Act [42 U.S.C. 1973ff et seq.].

2. The secretary of state shall make available to covered voters information regarding procedures for casting military-overseas ballots.
3. The secretary of state shall establish an electronic transmission system through which covered voters may apply for and receive documents and other information under sections 3 through 18 of this Act.
4. The secretary of state shall develop standardized absentee-voting materials, including privacy and transmission envelopes and electronic equivalents, authentication materials, and voting instructions, to be used with the military-overseas ballot of a voter authorized to vote in any jurisdiction in this state and, to the extent reasonably possible, shall do so in coordination with other states.
5. The secretary of state shall prescribe the form and content of a declaration for use by a covered voter to swear or affirm specific representations pertaining to the voter's identity, eligibility to vote, status as a covered voter, and timely and proper completion of an overseas-military ballot. The declaration must be based on the declaration prescribed to accompany a federal write-in absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act [103, 42 U.S.C. 1973ff-2], as modified to be consistent with sections 3 through 18 of this Act. The secretary of state shall ensure that a form for the execution of the declaration, including an indication of the date of execution of the declaration, is a prominent part of all balloting materials for which the declaration is required.

**SECTION 6.** A new section to chapter 16.1-07 of the North Dakota Century Code is created and enacted as follows:

**Methods of applying for military-overseas ballot.**

1. A covered voter may apply for a military-overseas ballot using either the absentee ballot application under this chapter or the federal postcard application, as prescribed under the Uniformed and Overseas Citizens Absentee Voting Act [42 U.S.C. 1973ff(b)(2)] or the application's electronic equivalent if approved under guidelines established by the secretary of state.
2. The secretary of state shall ensure that the electronic transmission system described in section 5 of this Act is capable of accepting the submission of both a federal postcard application and any other approved electronic military-overseas ballot application sent to the appropriate election official. The voter may use the electronic transmission system or any other method approved under guidelines established by the secretary of state to apply for a military-overseas ballot.
3. A covered voter may use the declaration accompanying the federal write-in absentee ballot, as prescribed under the Uniformed and Overseas Citizens Absentee Voting Act [42 U.S.C. 1973ff-2] as an application for a military-overseas ballot simultaneously with the submission of the federal write-in absentee ballot, if the declaration is received by the appropriate election official by midnight on the day before the election.
4. To receive the benefits of sections 3 through 18 of this Act, a covered voter must inform the appropriate election official that the voter is a covered voter. Methods of informing the appropriate election official that a voter is a covered voter include:

- a. The use of a federal postcard application or federal write-in absentee ballot;
- b. The use of an overseas address on a ballot application; and
- c. The inclusion on a ballot application of other information sufficient to identify the voter as a covered voter.

**SECTION 7.** A new section to chapter 16.1-07 of the North Dakota Century Code is created and enacted as follows:

**Timeliness and scope of application for military-overseas ballot.**

An application for a military-overseas ballot is timely if received by the appropriate election official before the close of business on the day before the election. An application for a military-overseas ballot for a primary election, whether or not timely, is effective as an application for a military-overseas ballot for the general election.

**SECTION 8.** A new section to chapter 16.1-07 of the North Dakota Century Code is created and enacted as follows:

**Transmission of unvoted ballots.**

1. For all covered elections for which this state has not received a waiver under the Military and Overseas Voter Empowerment Act [42 U.S.C. 1973ff-1(q)(2)] not later than forty-five days before the election or, if the forty-fifth day before the election is a weekend or holiday, not later than the business day preceding the forty-fifth day, the appropriate election official shall transmit ballots and balloting materials to all covered voters who by that date submit a valid military-overseas ballot application.
2. A covered voter who requests a ballot and balloting materials be sent to the voter by electronic transmission may choose facsimile transmission, electronic mail, or other electronic delivery approved by the secretary of state. The election official charged with distributing a ballot and balloting materials shall transmit the ballot and balloting materials to the voter using the means of transmission chosen by the voter.
3. If a ballot application from a covered voter arrives after the election official begins transmitting ballots and balloting materials to voters, the official shall transmit them to the voter not later than two business days after the application arrives.

**SECTION 9.** A new section to chapter 16.1-07 of the North Dakota Century Code is created and enacted as follows:

**Timely casting of ballot.**

To be valid, a military-overseas ballot must be submitted for mailing or other authorized means of delivery not later than 11:59 p.m. on the day before the election at the place where the voter completes the ballot. A military-overseas ballot must be received by the appropriate election official before the canvassing board meeting.

**SECTION 10.** A new section to chapter 16.1-07 of the North Dakota Century Code is created and enacted as follows:

**Federal write-in absentee ballot.**

A covered voter may use the federal write-in absentee ballot, in accordance with the Uniformed and Overseas Citizens Absentee Voting Act [42 U.S.C. 1973ff-2], to vote for all offices and ballot measures in a covered election.

**SECTION 11.** A new section to chapter 16.1-07 of the North Dakota Century Code is created and enacted as follows:

**Receipt of voted ballot.**

1. A valid military-overseas ballot cast in accordance with section 9 of this Act must be counted if it is delivered before the canvassing board meets to canvass the returns.
2. If, at the time of completing a military-overseas ballot and balloting materials, the voter has affirmed under penalty of perjury under section 12 of this Act that the ballot was timely submitted, the ballot may not be rejected on the basis that it has a late postmark, an unreadable postmark, or no postmark.

**SECTION 12.** A new section to chapter 16.1-07 of the North Dakota Century Code is created and enacted as follows:

**Declaration.**

Each military-overseas ballot must include or be accompanied by a declaration signed by the voter declaring that a material misstatement of fact in completing the document may be grounds for a conviction of perjury under the laws of the United States or this state.

**SECTION 13.** A new section to chapter 16.1-07 of the North Dakota Century Code is created and enacted as follows:

**Confirmation of receipt of application and voted ballot.**

The secretary of state, in coordination with local election officials, shall implement an electronic free-access system by which a covered voter may determine by telephone, electronic mail, or internet access whether:

1. The voter's military-overseas ballot application has been received and accepted; and
2. The voter's military-overseas ballot has been received and the current status of the ballot.

**SECTION 14.** A new section to chapter 16.1-07 of the North Dakota Century Code is created and enacted as follows:

**Use of voter's electronic mail address.**

1. A covered voter who provides an electronic mail address to a local election official may request that the voter's application for a military-overseas ballot be considered a standing request for electronic delivery of a ballot for all elections held through December thirty-first of the year following the calendar year of the date of the application or another shorter period the voter specifies. An election official shall provide a military-overseas ballot to a voter who makes a request for each election to which the request is applicable. A covered voter

entitled to receive a military-overseas ballot for a primary election under this subsection also is entitled to receive a military-overseas ballot for the general election.

2. An electronic mail address provided by a covered voter is a confidential record. An election official may use the address only to communicate with the voter about the voting process, including transmitting military-overseas ballots and election materials if the voter has requested electronic transmission, and verifying the voter's mailing address and physical location, as needed.

**SECTION 15.** A new section to chapter 16.1-07 of the North Dakota Century Code is created and enacted as follows:

**Publication of election notice.**

1. Not later than one hundred days before a regularly scheduled election to which sections 3 through 18 of this Act apply, and as soon as practicable in the case of a special election, the secretary of state and each local election official charged with printing and distributing ballots and balloting materials for that election shall prepare an election notice, to be used in conjunction with the federal write-in absentee ballot described in section 10 of this Act. The election notice must contain a list of all of the ballot measures and federal, state, and local offices that as of that date the secretary of state and the local election official expect to be on the ballot on the date of the election. The notice also must contain specific instructions for how a voter is to indicate on the federal write-in absentee ballot the voter's choice for each office to be filled and for each ballot measure to be contested.
2. A covered voter may request a copy of an election notice. The officials charged with preparing the election notice shall send the notice to the voter by facsimile, electronic mail, or regular mail, as the voter requests if the voter is not able to obtain that same notice from the secretary of state's website.
3. At least fifty-five days before an election, the officials charged with preparing the election notice shall update the notice with the certified candidates for each office and ballot measure questions and make the updated notice publicly available.
4. A local election official who maintains an internet website shall make updated versions of its election notices regularly available on the website.

**SECTION 16.** A new section to chapter 16.1-07 of the North Dakota Century Code is created and enacted as follows:

**Prohibition of nonessential requirements.**

1. If a voter's mistake or omission in the completion of a document under sections 3 through 18 of this Act does not prevent determining whether a covered voter is eligible to vote, the mistake or omission does not invalidate the document. Failure to satisfy a nonessential requirement, such as using paper or envelopes of a specified size or weight, does not invalidate a document submitted under this chapter. In any write-in ballot authorized by law, if the intention of the voter is discernable, as provided under the Help America Vote Act [42 U.S.C. 15481(a)(6)], an abbreviation, misspelling, or other minor variation in the form of the name of a candidate or a political party must be accepted as a valid vote.



2. Notarization is not required for the execution of a document under sections 3 through 18 of this Act. An authentication, other than the declaration specified in section 12 of this Act or the declaration on the federal postcard application and federal write-in absentee ballot, is not required for execution of a document under sections 3 through 18 of this Act. The declaration and any information in the declaration may be compared against information on file to ascertain the validity of the document.

**SECTION 17.** A new section to chapter 16.1-07 of the North Dakota Century Code is created and enacted as follows:

**Issuance of injunction or other equitable relief.**

A court may issue an injunction or grant other equitable relief appropriate to ensure substantial compliance with, or enforce, sections 3 through 18 of this Act on application by:

1. A covered voter alleging a grievance under sections 3 through 18 of this Act;  
or
2. An election official in this state.

**SECTION 18.** A new section to chapter 16.1-07 of the North Dakota Century Code is created and enacted as follows:

**Relation to Electronic Signatures in Global and National Commerce Act.**

Sections 3 through 18 of this Act modify, limit, and supersede the Electronic Signatures in Global and National Commerce Act [15 U.S.C. 7001 et seq.] but do not modify, limit, or supersede section 101(c) of that Act [15 U.S.C. 7001(c)] or authorized electronic delivery of any of the notices described in section 103(b) of that Act [15 U.S.C. 7003(b)].

**SECTION 19. REPEAL.** Sections 16.1-07-03 and 16.1-07-08.1 of the North Dakota Century Code are repealed.

Approved April 7, 2011  
Filed April 7, 2011

## CHAPTER 155

### SENATE BILL NO. 2073

(Judiciary Committee)

(At the request of the Secretary of State)

AN ACT to amend and reenact section 16.1-08.1-01, subsection 1 of section 16.1-08.1-03.3, and section 16.1-08.1-03.5 of the North Dakota Century Code, relating to the definition of direct expenditures and campaign contribution statements.

#### 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. "Association" means any club, association, union, brotherhood, fraternity, organization, or group of any kind of two or more persons, including labor unions, trade associations, professional associations, or governmental associations, which is united for any purpose, business, or object and which assesses any dues, membership fees, or license fees in any amount, or which maintains a treasury fund in any amount. The term does not include corporations, cooperative corporations, limited liability companies, political committees, or political parties.
2. "Candidate" means an individual who seeks nomination for election or election to public office, and includes:
  - a. A person holding public office;
  - b. A person who has publicly declared that person's candidacy for nomination for election or election to public office or has filed or accepted a nomination for public office;
  - c. A person who has formed a campaign or other committee for that person's candidacy for public office;
  - d. A person who has circulated a nominating petition to have that person's name placed on the ballot; and
  - e. A person who has, in any manner, solicited or received a contribution for that person's candidacy for public office, whether before or after the election for that office.
3. "Contribution" means a gift, transfer, conveyance, provision, receipt, subscription, loan, advance, 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. 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 spent by a candidate on the candidate's own behalf.
  - d. Money or anything of value received for commercial transactions, including rents, advertising, or sponsorships made as a part of a fair market value bargained-for exchange.
  - e. Money or anything of value received by a candidate in that person's personal capacity, including pursuant to a contract or agreement made for personal or private employment purposes, and not received for a political purpose or to influence the performance of that person's official duty.
  - f. Contributions of products or services for which the actual cost or fair market value are reimbursed by a payment of money.
4. "Cooperative corporations", "corporations", and "limited liability companies" are as defined in this code, and for purposes of this chapter "corporations" includes nonprofit corporations.
5. "Direct expenditure" means an expenditure made by a corporation, cooperative corporation, limited liability company, or association for the specific purpose of promoting passage or defeat of an initiated or referred measure without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of a measure committee.
6. "Expenditure" means 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 the direct purpose of influencing the passage or defeat of a measure or the nomination for election, or election, of any individual to office. The term also means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make any expenditure and includes the transfer of funds by a political committee to another political committee.
- ~~6-7.~~ "Patron" means a person who owns equity interest in the form of stock, shares, or membership or maintains similar financial rights in a cooperative corporation.

- ~~7-8.~~ "Person" means an individual, partnership, political committee, association, corporation, cooperative corporation, limited liability company, or other organization or group of persons.
- ~~8-9.~~ "Political committee" means any committee, club, association, or other group of persons which receives contributions or makes expenditures for political purposes and includes the following:
- a. A political action committee, derived from a corporation, cooperative corporation, limited liability company, or an association that is prohibited from making direct contributions for political purposes under section 16.1-08.1-03.3, and which solicits or receives contributions or makes expenditures for political purposes;
  - b. A candidate committee, established to support an individual candidate seeking statewide office, that solicits or receives contributions for political purposes;
  - c. An organization governed by section 527 of the Internal Revenue Code [26 U.S.C. 527], which solicits or receives contributions or makes expenditures for political purposes;
  - d. A multicandidate political committee, established to support multiple groups or slates of candidates seeking public office, that solicits or receives contributions for political purposes; and
  - e. A measure committee that solicits or receives contributions for the purpose of aiding or opposing a measure to be voted upon by the voters of the state.
- ~~9-10.~~ "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.
- ~~40-11.~~ "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 state office or any position taken in any bona fide news story, commentary, or editorial.
- ~~44-12.~~ "Public office" means every office to which persons can be elected by vote of the people under the laws of this state.

**SECTION 2. AMENDMENT.** Subsection 1 of section 16.1-08.1-03.3 of the North Dakota Century Code is amended and reenacted as follows:

1. A corporation, cooperative corporation, limited liability company, or association may not make a direct contribution:
  - a. To aid any political party, political committee, or organization except that a direct contribution may be made to a measure committee as provided in section 16.1-08.1-03.5.
  - b. To aid any corporation, limited liability company, or association organized or maintained for political purposes as defined in this chapter.
  - c. To aid any candidate for public office or for nomination to public office.
  - d. For any political purpose or the reimbursement or indemnification of any person for money or property so used.
  - e. For the influencing of any measure before the legislative assembly, except in accordance with chapter 54-05.1.

**SECTION 3. AMENDMENT.** Section 16.1-08.1-03.5 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-08.1-03.5. ~~Direct~~Allowable corporate contributions and expenditures - Passage or defeat of a measure or state political party building funds– Report required.**

1. ~~This chapter does not prohibit the exercise by corporations~~Corporations, cooperative corporations, limited liability companies, and associations of the right to~~may~~ make expenditures and contributions to a measure committee, as described in section 16.1-08.1-01, for the purpose of promoting passage or defeat of initiated or referred measures, ~~or. Corporations, cooperative corporations, limited liability companies, and associations may make expenditures and contributions~~ for promoting any general political philosophy or belief deemed in the best interest of the employees, stockholders, patrons, or members of the corporation, cooperative corporation, limited liability company, or association other than a "political purpose" as defined by this chapter. ~~Any corporation, cooperative corporation, limited liability company, or association that receives contributions pursuant to section 16.1-08.1-03.1 or spends money for the purpose of promoting passage or defeat of initiated or referred measures, other than a contribution to another person or measure committee promoting passage or defeat of an initiated or referred measure, shall file a statement pursuant to section 16.1-08.1-03.1 along with a statement listing the total amount of money spent for that purpose. The statements filed pursuant to section 16.1-08.1-03.1 must be filed with the secretary of state no later than the twelfth day before the date of the election in which the measure appears or would have appeared on the ballot complete from the beginning of that calendar year through the twentieth day before the date of the election. Statements showing the total amount of money spent for the purpose of promoting passage or defeat of initiated or referred measures must be filed with the secretary of state through the end of the calendar year in which the measure appeared on the ballot.~~
2. A corporation, cooperative corporation, limited liability company, or association may make a donation of property or money to a state political party or nonprofit entity affiliated with or under the control of a state political party for deposit in a separate and segregated fund. Money in the fund must be used exclusively by the state political party or nonprofit entity affiliated with or under

the control of a state political party for purchasing, maintaining, or renovating a building and for the purchase of fixtures for the building. A state political party or nonprofit entity affiliated with or under the control of a state political party receiving a donation under this subsection shall file a statement with the secretary of state no later than the thirty-first day of January of each calendar year. The statement must include the name and mailing address of each donor, the amount of each donation, the date each donation was received, all expenditures made from the fund during the previous calendar year, and cash on hand in the fund at the start and close of the reporting period. Any income and financial gain generated from a building purchased, maintained, or renovated from donations authorized under this subsection and not otherwise authorized by law must be deposited in the building fund and must be reported when the political party or nonprofit entity files the statement required under this subsection.

3. A corporation, cooperative corporation, limited liability company, or association may make a direct expenditure for the purpose of promoting passage or defeat of initiated or referred measures. A direct expenditure statement must be filed with the secretary of state within forty-eight hours after making the expenditure. The statement must include:
  - a. The full name of the corporation, cooperative corporation, limited liability company, or association;
  - b. The complete address of the corporation, cooperative corporation, limited liability company, or association;
  - c. The name and telephone number of the person completing the report;
  - d. The title of the measure and whether the expenditure is made in support of or opposition to the measure;
  - e. The election date on which the measure either will appear or did appear on the ballot;
  - f. The amount of the expenditure;
  - g. The cumulative total amount of expenditures since the beginning of the calendar year in support of or opposition to the measure;
  - h. The printed name and signature of the person completing the report, attesting to the report being true, complete, and correct; and
  - i. The date on which the report was signed.

Approved April 27, 2011  
Filed April 27, 2011

## CHAPTER 156

### HOUSE BILL NO. 1311

(Representatives S. Meyer, Headland, Kretschmar, Boe)  
(Senators Bowman, Olafson)

AN ACT to amend and reenact section 16.1-08.1-03.1 of the North Dakota Century Code, relating to contribution and expenditure statements filed by persons sponsoring the circulation of initiated measure petitions.

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

**SECTION 1. AMENDMENT.** Section 16.1-08.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-08.1-03.1. Contributions statement required of persons and measure committees circulating or promoting passage or defeat of initiated or referred measure.**

1. At the time the sponsoring committee for an initiated measure petition submits signed petitions to the secretary of state, the committee also shall submit a statement disclosing the total amount of contributions received by the committee to aid the committee in drafting and circulating the petition, the name and mailing address of each person that contributed more than one hundred dollars in the aggregate to the sponsoring committee, the date each such contribution was received, and the total amount of expenditures made by the committee to aid in the drafting and circulation of the petition.
2. Any person or measure committee, as described in section 16.1-08.1-01, ~~whethat~~ is soliciting or accepting a contribution for the purpose of aiding or opposing the circulation or passage of a statewide initiative or referendum petition or measure placed upon a statewide ballot by action of the legislative assembly at any election shall file a statement in accordance with this ~~section~~subsection if the person has received any ~~contributions from a person~~contribution in excess of one hundred dollars. The statement must include the name and mailing address of ~~all contributors who~~each person that contributed in excess of one hundred dollars to the person, the amount of each reportable contribution, and the date each reportable contribution was received. The statement must include the name and mailing address of each recipient of an expenditure exceeding one hundred dollars in the aggregate, the amount of each reportable expenditure, and the date the expenditure was made.
- ~~2-3.~~ A person or measure committee ~~whethat~~ is soliciting or accepting a contribution for the purpose of aiding or opposing the circulation or passage of a statewide initiative or referendum petition or measure placed upon a statewide ballot by action of the legislative assembly may not accept a contribution of more than one hundred dollars from a ~~person who does not reside in this state or from~~ an out-of-state person or political committee unless the contribution is accompanied by a certified statement from the contributor listing the name, address, and amount contributed by each person ~~whethat~~ contributed more than one hundred dollars of the contribution. The statement

must indicate if no ~~individual~~ person contributed in excess of one hundred dollars of the out-of-state person's or political committee's overall contribution. The certified statement must also list the occupation, employer, and principal place of business for each ~~person~~individual who contributed more than one hundred dollars of the contribution. The person soliciting or accepting a contribution for the purpose of aiding the circulation of a statewide initiative or referendum petition or of promoting passage or defeat of a statewide initiated or referred measure ~~must~~shall include this statement with the contribution statement required to be filed under subsection 42.

~~3-4.~~ The statement required of a person or measure committee under subsection 42 must be filed with the secretary of state no later than the twelfth day ~~prior to~~before the date of the election in which the measure appears or would have appeared on the ballot complete from the beginning of that calendar year through the twentieth day ~~prior to~~before the date of the election. A complete statement for the entire calendar year for each statement required to be filed under subsections 2 and 3 must be filed no later than the thirty-first day of January of the following year. Even if a person required to report according to this section has not received any contributions in excess of one hundred dollars during the reporting period, the person shall file a statement as required by this chapter. A statement filed according to ~~this section~~subsections 2 and 3 during the reporting period must show the following:

- a. The gross total of all contributions received and expenditures made in excess of one hundred dollars;
- b. The gross total of all contributions received and expenditures made of one hundred dollars, or less; and
- c. The cash on hand in the filer's account at the start and close of the reporting period.

Approved April 19, 2011  
Filed April 19, 2011



## CHAPTER 157

### SENATE BILL NO. 2327

(Senators Dever, J. Lee, Wanzek, Dotzenrod)  
(Representatives Koppelman, Weiler)

AN ACT to amend and reenact subdivision a of subsection 2 of section 16.1-10-02 of the North Dakota Century Code, relating to the use of state or political subdivision services or property for political purposes; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Subdivision a of subsection 2 of section 16.1-10-02 of the North Dakota Century Code is amended and reenacted as follows:

- a. "Political purpose" means any activity undertaken in support of or in opposition to a statewide initiated or referred measure, a constitutional amendment or measure, a political subdivision ballot measure, or 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 state public office or a position taken in any bona fide news story, commentary, or editorial. Factual information may be presented regarding a ballot question solely for the purpose of educating voters if the information does not advocate for or against or otherwise reflect a position on the adoption or rejection of the ballot question.

Approved April 27, 2011  
Filed April 27, 2011

# ENERGY

## CHAPTER 158

### HOUSE BILL NO. 1218

(Representatives Weiler, Bellew, Boehning, Headland, Owens, Wrangham)

AN ACT to amend and reenact subsections 4 and 5 of section 17-07-01 of the North Dakota Century Code, relating to development of the state's energy policy.

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

<sup>64</sup> **SECTION 1. AMENDMENT.** Subsections 4 and 5 of section 17-07-01 of the North Dakota Century Code are amended and reenacted as follows:

4. The commission shall meet at least four times per biennium or as often as the chairman deems necessary. The commission shall hold at least two public hearings per biennium, at which time interested parties may present testimony regarding issues pertinent to the ~~development of the state's comprehensive energy~~ policy. The department of commerce shall provide staffing for the commission.
5. The ~~commission~~ legislative assembly shall develop a comprehensive energy policy for the state. The commission shall monitor progress made toward the goals outlined in the energy policy and make ~~changes~~ recommendations to the energy policy as needed. The commission shall report biennially to the legislative ~~council~~ management.

Approved April 4, 2011

Filed April 4, 2011

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<sup>64</sup> Section 17-07-01 was also amended by section 4 of Senate Bill No. 2034, chapter 460.

# FIRES

## CHAPTER 159

### HOUSE BILL NO. 1176

(Representatives Karls, Brabandt, Guggisberg)  
(Senators Klein, Schaible)

AN ACT to repeal section 18-04-08 of the North Dakota Century Code, relating to notification by the North Dakota firefighter's association of the treasurer of each fire department or company to the auditor of each municipality.

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

**SECTION 1. REPEAL.** Section 18-04-08 of the North Dakota Century Code is repealed.

Approved April 11, 2011  
Filed April 11, 2011

# FOODS, DRUGS, OILS, AND COMPOUNDS

## CHAPTER 160

### SENATE BILL NO. 2122

(Human Services Committee)  
(At the request of the State Board of Pharmacy)

AN ACT to amend and reenact subsections 3 and 4 of section 19-02.1-14.1 of the North Dakota Century Code, relating to electronic prescriptions.

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

**SECTION 1. AMENDMENT.** Subsections 3 and 4 of section 19-02.1-14.1 of the North Dakota Century Code are amended and reenacted as follows:

3. If a practitioner prescribes a drug by its brand name, the pharmacist may exercise professional judgment in the economic interest of the patient by selecting a drug product with the same generic name and demonstrated therapeutical equivalency as the one prescribed for dispensing and sale to the patient unless the practitioner specifically indicates in the practitioner's own handwriting "brand medically necessary" on a written prescription or expressly indicates that an oral prescription is to be dispensed as communicated. If the prescription is created electronically by the prescriber, the required legend must appear on the practitioner's screen. The practitioner must take a specific overt action to include the "brand medically necessary" language with the electronic transmission. The pharmacist shall note the instructions on the file copy of the prescription, or maintain the digital record as transmitted if it is an electronic prescription. A reminder legend must be placed on all prescription forms or appear on the computer screen of the electronic prescribing system. The legend must state "In order to require that a brand name product be dispensed, the practitioner must handwrite the words 'brand medically necessary'.". The legend printed on the prescription form or appearing on the prescriber's computer screen must be in at least six-point uppercase print or font. The pharmacist may not substitute a generic name drug product unless its price to the purchaser is less than the price of the prescribed drug product. In addition, a pharmacist may not substitute drug products in the following dosage forms: enteric coated tablets, controlled release products, injectable suspensions other than antibiotics, suppositories containing active ingredients for which systemic absorption is necessary for therapeutic activity, and different delivery systems for aerosol and nebulizer drugs. In the event that any drug listed above is, subsequent to January 1, 1982, determined to be therapeutically equivalent, then the previously mentioned substitution ban is automatically removed for that drug. The pharmacist shall inform the person receiving the drug when a prescription for a brand name drug product does not require that the prescribed drug be dispensed and of the person's right to refuse a generic name drug product selected by the pharmacist. The

pharmacy file copy of every prescription must include the brand name, if any, or the name of the manufacturer, packer, or distributor of the generic name drug dispensed. A pharmacist who selects and dispenses a therapeutically equivalent generic name drug product shall assume no greater liability for selecting the dispensed drug product than would be incurred in filling a prescription for a drug product prescribed by its generic name. The practitioner is not liable for the substitution made by a pharmacist.

4. In the case of a prescription for which a maximum allowable cost program for purposes of reimbursement has been established under title XIX of the federal Social Security Act, the following also apply:
  - a. If the practitioner has instructed the pharmacist to dispense as written, the words "brand medically necessary" must also be written on the prescription in the practitioner's own handwriting, or appear as part of the electronic prescription as noted in subsection 3. The pharmacist may dispense a therapeutically equivalent generic name drug product if this handwritten or electronic instruction does not appear on the prescription.
  - b. If the pharmacist is instructed orally to dispense a brand name drug as prescribed, the pharmacist shall reduce the prescription to writing and shall note the instructions on the file copy of the prescription. ~~The prescription must then be signed by the practitioner and the words "brand necessary" must also be written on the prescription in the practitioner's own handwriting.~~
  - c. If the practitioner has not instructed the pharmacist to dispense a brand name drug or medicine and the patient specifically requests a brand name drug or medicine, the patient shall pay the difference between the price to the patient of the brand name drug or medicine and the therapeutically equivalent generic name drug or medicine if the price of the brand name drug or medicine is higher.

Approved April 20, 2011  
Filed April 20, 2011

## CHAPTER 161

### SENATE BILL NO. 2119

(Judiciary Committee)  
(At the request of the State Board of Pharmacy)

AN ACT to amend and reenact sections 19-03.1-05, 19-03.1-07, 19-03.1-09, 19-03.1-11, and 19-03.1-13 of the North Dakota Century Code, relating to the scheduling of controlled substances.

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

**SECTION 1. 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. Acetyl-alpha-methylfentanyl (also known as N-[1-(1-methyl-2-phenethyl)-4-piperidiny]-N-phenylacetamide).
  - b. Acetylmethadol.
  - c. Allylprodine.
  - d. Alphacetylmethadol.
  - e. Alphameprodine.
  - f. Alphamethadol.
  - g. Alpha-methylfentanyl (also known as N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidy] 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine) propionanilide;
  - h. Alpha-methylthiofentanyl (also known as N-[1-methyl-2-(2-thienyl)ethyl-4-piperidiny]-N-phenylpropanamide).
  - i. Benzethidine.
  - j. Betacetylmethadol.

- k. Beta-hydroxyfentanyl (also known as N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide).
- l. Beta-hydroxy-3-methylfentanyl (also known as N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide).
- m. Betameprodine.
- n. Betamethadol.
- o. Betaprodine.
- p. Clonitazene.
- q. Dextromoramide.
- r. Diampromide.
- s. Diethylthiambutene.
- t. Difenoxyin.
- u. Dimenoxadol.
- v. Dimepheptanol.
- w. Dimethylthiambutene.
- x. Dioxaphetyl butyrate.
- y. Dipipanone.
- z. Ethylmethylthiambutene.
- aa. Etonitazene.
- bb. Etoxidine.
- cc. Furethidine.
- dd. Hydroxypethidine.
- ee. Ketobemidone.
- ff. Levomoramide.
- gg. Levophenacetyl morphan.
- hh. 3-Methylfentanyl (also known as N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide).
- ii. 3-Methylthiofentanyl (also known as N-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide).
- jj. Morpheridine.

- kk. MPPP (also known as 1-methyl-4-phenyl-4-propionoxypiperidine).
  - ll. Noracymethadol.
  - mm. Norlevorphanol.
  - nn. Normethadone.
  - oo. Norpipanone.
  - pp. Para-fluorofentanyl (also known as N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide).
  - qq. PEPAP (1-(2-Phenylethyl)-4-Phenyl-4-acetoxypiperidine).
  - rr. Phenadoxone.
  - ss. Phenampromide.
  - tt. Phenomorphan.
  - uu. Phenoperidine.
  - vv. Piritramide.
  - ww. Proheptazine.
  - xx. Properidine.
  - yy. Propiram.
  - zz. Racemoramide.
  - aaa. Thiofentanyl (also known as N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide).
  - bbb. Tilidine.
  - ccc. Trimeperidine.
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-bromo-2, 5-dimethoxy-amphetamine (also known as 4-bromo-2, 5-dimethoxy-a-methylphenethylamine; 4-bromo-2, 5-DMA).
  - d. 4-bromo-2, 5-dimethoxyphenethylamine (also known as 4-bromo-2, 5-DMPEA).
  - e. 2,5-dimethoxy-amphetamine (also known as 2, 5-dimethoxy-a-methylphenethylamine; 2, 5-DMA).

- f. 2,5-dimethoxy-4-ethylamphetamine (also known as DOET).
- g. 2,5-dimethoxy-4-(n)-propylthiophenethylamine (also known as 2C-T-7).
- h. 4-methoxyamphetamine (also known as 4-methoxy- $\alpha$ -methylphenethylamine; paramethoxyamphetamine; PMA).
- i. 5-methoxy-3,4-methylenedioxy-amphetamine.
- j. 4-methyl-2,5-dimethoxy-amphetamine (also known as 4-methyl-2,5-dimethoxy- $\alpha$ -methylphenethylamine; DOM and STP).
- k. 5-Methoxy-N,N-Dimethyltryptamine.
- l. 3,4-methylenedioxy amphetamine.
- ~~l.m.~~ 3,4-methylenedioxy-methamphetamine (also known as MDMA).
- ~~m.n.~~ 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl- $\alpha$ -methyl-3,4(methylenedioxy)phenethylamine, N-ethyl, MDA, MDE, MDEA).
- ~~n.o.~~ N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy- $\alpha$ -methyl-3,4(methylenedioxy)phenylamine, and N-hydroxy MDA).
- ~~o.p.~~ 3,4,5-trimethoxy amphetamine.
- ~~p.q.~~ Bufotenine (also known as 3-(Beta-Dimethyl-aminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine).
- ~~q.r.~~ 5-methoxy-N,N-diisopropyltryptamine.
- ~~r.s.~~ Diethyltryptamine (also known as N, N-Diethyltryptamine; DET).
- ~~s.t.~~ Dimethyltryptamine (also known as DMT).
- ~~t.u.~~ Hashish.
- ~~u.v.~~ Ibogaine (also known as 7-Ethyl-6, 6B, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5 H-pyrido [1', 2':1,2] azepino (5,4-b) indole; Tabernanthe iboga).
- ~~v.w.~~ Lysergic acid diethylamide.
- ~~w.x.~~ Marijuana.
- ~~x.y.~~ Mescaline.
- ~~y.z.~~ Parahexyl (also known as 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzol[b,d]pyran; Synhexyl).
- ~~z.aa.~~ 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).

~~aa-bb.~~ N-ethyl-3-piperidyl benzilate.

~~bb-cc.~~ N-methyl-3-piperidyl benzilate.

~~ee-dd.~~ Psilocybin.

~~dd-ee.~~ Psilocyn.

~~ee-ff.~~ Tetrahydrocannabinols (synthetic) equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. Or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following, 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.
- (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.)

gg. Cannabinoids, synthetic. This subdivision contains the synthetic chemicals which have similar effects on the cannabinoid receptors. 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) Naphthoylindoles. Any compound containing a 3-(1-naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl 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-3-(1-naphthoyl)indole - Other names: JWH-018 and AM-678.
- (b) 1-Butyl-3-(1-naphthoyl)indole - Other names: JWH-073.
- (c) 1-Pentyl-3-(4-methoxy-1-naphthoyl)indole - Other names: JWH-081.

- (d) 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole - Other names: JWH-200.
- (e) 1-Propyl-2-methyl-3-(1-naphthoyl)indole - Other names: JWH-015.
- (f) 1-Hexyl-3-(1-naphthoyl)indole - Other names: JWH-019.
- (g) 1-Pentyl-3-(4-methyl-1-naphthoyl)indole - Other names: JWH-122.
- (h) 1-Pentyl-3-(4-ethyl-1-naphthoyl)indole - Other names: JWH-210.
- (i) 1-Pentyl-3-(4-chloro-1-naphthoyl)indole - Other names: JWH-398.
- (j) 1-(5-fluoropentyl)-3-(1-naphthoyl)indole - Other names: AM-2201.
- (2) 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, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl 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.
- (3) Naphthoylpyrroles. Any compound containing a 3-(1-naphthoyl)pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl 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.
- (4) Naphthylmethylindenes. Any compound containing a naphthylideneindene structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl 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.
- (5) Phenylacetylindoles. Any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent.

whether or not substituted in the phenyl ring to any extent. Examples include:

- (a) 1-(2-cyclohexylethyl)-3-(2-methoxyphenylacetyl)indole - Other names: RCS-8.
- (b) 1-Pentyl-3-(2-methoxyphenylacetyl)indole - Other names: JWH-250.
- (c) 1-Pentyl-3-(2-methylphenylacetyl)indole - Other names: JWH-251.
- (d) 1-Pentyl-3-(2-chlorophenylacetyl)indole - Other names: JWH-203.
- (6) Cyclohexylphenols. Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl 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.
- (7) Benzoylindoles. Any compound containing a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. Examples include:
- (a) 1-Pentyl-3-(4-methoxybenzoyl)indole - Other names: RCS-4.
- (b) 1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole - Other names: AM-694.
- (c) (4-Methoxyphenyl)-[2-methyl-1-(2-(4-morpholinyl)ethyl)indol-3-yl]methanone - Other names: WIN 48,098 and Pravadoline.
- (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.

- ~~ff-hh~~. Ethylamine analog of phencyclidine (also known as N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE).
- ~~gg-ii~~. Pyrrolidine analog of phencyclidine (also known as 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP).
- ~~hh-ji~~. Thiophene analog of phencyclidine (also known as (1-[1-(2-thienyl)cyclohexyl] piperidine; 2-Thienylanalog of phencyclidine; TPCP, TCP).
- ~~ii-kk~~. 1-[1-(2-thienyl)cyclohexyl]pyrrolidine (also known as TCPy).
- ~~jj-ll~~. 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:
- Flunitrazepam.
  - Gamma-hydroxybutyric acid.
  - Mecloqualone.
  - 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 (also known as 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone).
  - Fenethylamine.
  - Mephedrone (2-methylamino-1-p-tolylpropan-1-one) also known as 4-methylmethcathinone (4-MMC), 4-methylephedrone.
  - (±)cis-4-methylaminorex (also known as (±)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine).
  - 3,4-Methylenedioxypropylamphetamine (MDPV).
- e-g. Methcathinone (also known as (2-methylamino-1-phenylpropan-1-one).

~~f-h~~. N-Benzylpiperazine (also known as BZP, 1-benzylpiperazine).

~~g-i~~. N-ethylamphetamine.

~~h-j~~. N, N-dimethylamphetamine (also known as N,N-alpha-trimethyl-benzeethanamine; N,N-alpha-trimethylphenethylamine).

**SECTION 2. AMENDMENT.** Section 19-03.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**19-03.1-07. Schedule II.**

1. The controlled substances listed in this section are included in schedule II.
2. Schedule II 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. Substances, vegetable origin or chemical synthesis. Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
  - a. Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrophan, nalbuphine, nalmefene, naloxone, and naltrexone and their respective salts, but including the following:
    - (1) Codeine.
    - (2) Dihydroetorphine.
    - (3) Ethylmorphine.
    - (4) Etorphine hydrochloride.
    - (5) Granulated opium.
    - (6) Hydrocodone.
    - (7) Hydromorphone.
    - (8) Metopon.
    - (9) Morphine.
    - (10) Opium extracts.
    - (11) Opium fluid.
    - (12) Oripavine.
    - (13) Oxycodone.

- (14) Oxymorphone.
  - (15) Powder opium.
  - (16) Raw opium.
  - (17) Thebaine.
  - (18) Tincture of opium.
- b. Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subdivision a, but not including the isoquinoline alkaloids of opium.
  - c. Opium poppy and poppy straw.
  - d. Coca leaves and any salt, compound, derivative, or preparation of coca leaves, including cocaine and ecgonine and their salts, isomers, derivatives, and salts of isomers and derivatives, and any salt, compound, derivative, or preparation thereof that is chemically equivalent or identical with any of these substances, except that the nondosage substances must include decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.
  - e. Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrine alkaloids of the opium poppy).
4. Opiates. Unless specifically excepted or unless in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, ethers, and salts whenever the existence of those isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrophan and levopropoxyphene excepted:
- a. Alfentanil.
  - b. Alphaprodine.
  - c. Anileridine.
  - d. Bezitramide.
  - e. Bulk dextropropoxyphene (nondosage forms).
  - f. Carfentanil.
  - g. Dihydrocodeine.
  - h. Diphenoxylate.
  - i. Fentanyl.
  - j. Isomethadone.
  - k. Levo-alphaacetylmethadol (LAAM).



- l. Levomethorphan.
  - m. Levorphanol.
  - n. Metazocine.
  - o. Methadone.
  - p. Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane.
  - q. Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid.
  - r. Pethidine (also known as meperidine).
  - s. Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine.
  - t. Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate.
  - u. Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.
  - v. Phenazocine.
  - w. Priminodine.
  - x. Racemethorphan.
  - y. Racemorphan.
  - z. Remifentanil.
  - aa. Sufentanil.
  - bb. Tapentadol.**
5. 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:
- a. Amphetamine, its salts, optical isomers, and salts of its optical isomers.
  - b. Lisdexamfetamine, its salts, isomers, and salts of isomers.
  - c. Methamphetamine, its salts, isomers, and salts of isomers.
  - d. Phenmetrazine and its salts.
  - e. Methylphenidate.
6. Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- a. Amobarbital.
  - b. Glutethimide.
  - c. Pentobarbital.
  - d. Phencyclidine.
  - e. Secobarbital.
7. Hallucinogenic substances. 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].
8. Immediate precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances:
- a. Immediate precursor to amphetamine and methamphetamine: Phenylacetone. Some trade or other names: phenyl-2-propanone; P2P, benzyl methyl ketone; methyl benzyl ketone.
  - b. Immediate precursors to phencyclidine (PCP):
    - (1) 1-phenylcyclohexylamine.
    - (2) 1-piperidinocyclohexanecarbonitrile (PCC).
  - c. Immediate precursors to fentanyl: 4-anilino-N-phenethyl-4-piperidine (ANPP).

**SECTION 3. AMENDMENT.** Section 19-03.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**19-03.1-09. Schedule III.**

1. The controlled substances listed in this section are included in schedule III.
2. Schedule III consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.
3. Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
  - a. Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in schedule II and any other drug of the quantitative composition shown in that schedule for those drugs or which is the same except that it contains a lesser quantity of controlled substances.
  - b. Benzphetamine.

- c. Chlorphentermine.
  - d. Clortermine.
  - e. Phendimetrazine.
4. Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system:
- a. Any compound, mixture, or preparation containing:
    - (1) Amobarbital;
    - (2) Secobarbital;
    - (3) Pentobarbital;or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule.
  - b. Any suppository dosage form containing:
    - (1) Amobarbital;
    - (2) Secobarbital;
    - (3) Pentobarbital;or any salt of any of these drugs and approved by the food and drug administration for marketing only as a suppository.
  - c. Any substance that contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules thereof.
  - d. 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. Sulfondiethylmethane.
  - l. Sulfonethylmethane.

- m. Sulfonmethane.
- n. Tiletamine and zolazepam or any salt thereof. Some trade or other names for a tiletamine-zolazepam combination product: Telazol. Some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Some trade or other names for zolazepam: 4-2(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e][1,4]-diazepin-7(1H)-one, flupyrzapon.
5. Nalorphine.
6. Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:
- a. (1) Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.
- (2) Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
- (3) Not more than 300 milligrams of hydrocodone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.
- (4) Not more than 300 milligrams of hydrocodone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
- (5) Not more than 1.80 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
- (6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
- (7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
- (8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
- b. Buprenorphine.
7. Anabolic steroids. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any of the following anabolic steroids:

- a. 3beta,17-dihydroxy-5a-androstane;
- b. 3alpha,17beta-dihydroxy-5a-androstane;
- c. 5alpha-androstan-3,17-dione;
- d. 1-androstenediol (3beta,17beta-dihydroxy-5alpha-androst-1-ene);
- e. 1-androstenediol (3alpha,17beta-dihydroxy-5alpha-androst-1-ene);
- f. 4-androstenediol (3beta,17beta-dihydroxy-4-ene);
- g. 5-androstenediol (3beta,17beta-dihydroxy-androst-5-ene);
- h. 1-androstenedione ([5alpha]-androst-1-en-3,17-dione);
- i. 4-androstenedione (androst-4-en-3,17-dione);
- j. 5-androstenedione (androst-5-en-3,17-dione);
- k. Bolasterone  
(7alpha,17alpha-dimethyl-17beta-hydroxyandrost-4-en-3-one);
- l. Boldenone (17beta-hydroxyandrost-1,4,-diene-3-one);
- m. Boldione (androsta-1,4-diene-3,17-dione);
- n. Calusterone (7beta,17alpha-dimethyl-17beta-hydroxyandrost-4-en-3-one);
- o. Clostebol (4-chloro-17beta-hydroxyandrost-4-en-3-one);
- p. Dehydrochloromethyltestosterone  
(4-chloro-17beta-hydroxy-17alpha-methyl-androst-1,4-dien-3-one);
- q. Delta-1-dihydrotestosterone (also known as '1-testosterone')  
(17beta-hydroxy-5alpha-androst-1-en-3-one);
- r. Desoxymethyltestosterone (17a-methyl-5a-androst-2-en-17ol) (also known as madol);
- s. 4-dihydrotestosterone (17beta-hydroxy-androstan-3-one);
- t. Drostanolone (17beta-hydroxy-2alpha-methyl-5alpha-androstan-3-one);
- u. Ethylestrenol (17alpha-ethyl-17beta-hydroxyest-4-ene);
- v. Fluoxymesterone (9-fluoro-17alpha-methyl-11beta,  
17beta-dihydroxyandrost-4-en-3-one);
- w. Formebolone (2-formyl-17alpha-methyl-11alpha,  
17beta-dihydroxyandrost-1,4-dien-3-one);
- x. Furazabol (17alpha-methyl-17beta-hydroxyandrostano[2,3-c]-furazan);
- y. 13beta-ethyl-17alpha-hydroxygon-4-en-3-one;

- z. 4-hydroxytestosterone (4,17beta-dihydroxy-androst-4-en-3-one);
- aa. 4-hydroxy-19-nortestosterone (4,17beta-dihydroxy-estr-4-en-3-one);
- bb. Mestanolone (17alpha-methyl-17beta-hydroxy-5-androstan-3-one);
- cc. Mesterolone (1alpha-methyl-17beta-hydroxy-[5alpha]-androstan-3-one);
- dd. Methandienone  
(17alpha-methyl-17beta-dihydroxyandrost-1,4-dien-3-one);
- ee. Methandriol (17alpha-methyl-3beta,17beta-dihydroxyandrost-5-ene);
- ff. Methenolone (1-methyl-17beta-hydroxy-5alpha-androst-1-en-3-one);
- gg. 17alpha-methyl-3beta,17beta-dihydroxy-5a-androstane;
- hh. 17alpha-methyl-3alpha,17beta-dihydroxy-5a-androstane;
  - ii. 17alpha-methyl-3beta,17beta-dihydroxyandrost-4-ene;
  - jj. 17alpha-methyl-4-hydroxynandrolone  
(17alpha-methyl-4-hydroxy-17beta-hydroxyestr-4-en-3-one);
- kk. Methyldienolone  
(17alpha-methyl-17beta-hydroxyestra-4,9(10)-dien-3-one);
  - ll. Methyltrienolone  
(17alpha-methyl-17beta-hydroxyestra-4,9(11)-trien-3-one);
- mm. Methyltestosterone (17alpha-methyl-17beta-hydroxyandrost-4-en-3-one);
- nn. Mibolerone (7alpha,17alpha-dimethyl-17beta-hydroxyestr-4-en-3-one);
- oo. 17alpha-methyl-delta1-dihydrotestosterone  
(17bbeta-hydroxy-17alpha-methyl-5alpha-androst-1-en-3-one) (also known as '17-alpha-methyl-1-testosterone');
- pp. Nandrolone (17beta-hydroxyestr-4-en-3-one);
- qq. 19-nor-4-androstenediol (3beta,17beta-dihydroxyestr-4-ene);
- rr. 19-nor-4-androstenediol (3alpha,17beta-dihydroxyestr-4-ene);
- ss. 19-nor-5-androstenediol (3beta,17beta-dihydroxyestr-5-ene);
- tt. 19-nor-5-androstenediol (3alpha,17beta-dihydroxyester-5-ene);
- uu. 19-nor-4-androstenedione (estr-4-en-3,17-dione);
- vv. 19-nor-4,9(10)-androstadienedione (estra-4,9(10)-diene-3,17-dione);
- ww. 19-nor-5-androstenedione (estr-5-en-3,17-dione);
- xx. Norbolethone (13beta,17alpha-diethyl-17beta-hydroxygon-4-en-3-one);

- yy. Norclostebol (4-chloro-17beta-hydroxyestr-4-en-3-one);
- zz. Norethandrolone (17alpha-ethyl-17beta-hydroxyestr-4-en-3-one);
- aaa. Normethandrolone (17alpha-methyl-17beta-hydroxyestr-4-en-3-one);
- bbb. Oxandrolone  
(17alpha-methyl-17beta-hydroxy-2-oxa-[5alpha]-androstan-3-one);
- ccc. Oxymesterone (17alpha-methyl-4-17beta-dihydroxyandrost-4-en-3-one);
- ddd. Oxymetholone (17alpha-methyl-2-hydroxymethylene-17beta-hydroxy  
[5alpha]-androstan-3-one);
- eee. Stanozolol  
(17alpha-methyl-17beta-hydroxy[5alpha]-androst-2-eno[3,2-c]-pyrazole);
- fff. Stenbolone (17beta-hydroxy-2-methyl-[5alpha]-androst-1-en-3-one);
- ggg. Testolactone (13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid  
lactone);
- hhh. Testosterone (17beta-hydroxyandrost-4-en-3-one);
- iii. Tetrahydrogestrinone  
(13beta,17alpha-diethyl-17beta-hydroxygon-4,9,11-trien-3-one);
- jjj. Trenbolone (17beta-hydroxyestr-4,9,11-trien-3-one);

or any salt, ester, or isomer of a drug or substance described or listed in this subsection, if that salt, ester, or isomer promotes muscle growth.

The term does not include an anabolic steroid that is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the secretary of health and human services for administration unless any person prescribes, dispenses, possesses, delivers, or distributes for human use.

8. Hallucinogenic substances.
  - a. Dronabinol (synthetic) [(-)-delta-9-(trans)-tetrahydrocannabinol] in sesame oil and encapsulated in a soft gelatin capsule in a United States food and drug administration-approved drug product.
  - b. Any product in hard or soft gelatin capsule form containing natural dronabinol (derived from the cannabis plant) or synthetic dronabinol (produced from synthetic materials) in sesame oil, for which an abbreviated new drug application has been approved by the food and drug administration under section 505(j) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355(j)] which references as its listed drug the drug product referred to in subdivision a.
9. The board may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsections 3 and 4 from the application of all or any part of this chapter if the compound,

mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

**SECTION 4. AMENDMENT.** Section 19-03.1-11 of the North Dakota Century Code is amended and reenacted as follows:

**19-03.1-11. Schedule IV.**

1. The controlled substances listed in this section are included in schedule IV.
2. Schedule IV consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.
3. Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:
  - a. Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.
  - b. Dextropropoxyphene (also known as alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane).
4. Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:
  - a. Alprazolam.
  - b. Barbital.
  - c. Bromazepam.
  - d. ~~Butorphanol~~.
  - e. Camazepam.
  - e. Carisoprodol.
  - f. Chloral betaine.
  - g. Chloral hydrate.
  - h. Chlordiazepoxide.
  - i. Clobazam.
  - j. Clonazepam.



- k. Clorazepate.
- l. Clotiazepam.
- m. Cloxazolam.
- n. Delorazepam.
- o. Diazepam.
- p. Dichloralphenazone.
- q. Estazolam.
- r. Ethchlorvynol.
- s. Ethinamate.
- t. Ethyl loflazepate.
- u. Fludiazepam.
- v. Flurazepam.
- w. Fospropofol.
- x. Halazepam.
- ~~x~~-y. Haloxazolam.
- ~~y~~-z. Indiplon.
- ~~z~~-aa. Ketazolam.
- ~~aa~~-bb. Loprazolam.
- ~~bb~~-cc. Lorazepam.
- ~~cc~~-dd. Lormetazepam.
- ~~dd~~-ee. Mebutamate.
- ~~ee~~-ff. Medazepam.
- ~~ff~~-gg. Meprobamate.
- ~~gg~~-hh. Methohexital.
- ~~hh~~-ii. Methylphenobarbital (also known as mephobarbital).
- ~~ii~~-jj. Midazolam.
- ~~jj~~-kk. Nimetazepam.
- ~~kk~~-ll. Nitrazepam.

- ~~ll~~-mm. Nordiazepam.
- ~~mm~~-nn. Oxazepam.
- ~~nn~~-oo. Oxazolam.
- ~~oo~~-pp. Paraldehyde.
- ~~pp~~-qq. Petrichloral.
- ~~qq~~-rr. Phenobarbital.
- ~~rr~~-ss. Pinazepam.
- tt. Propofol.
- ~~ss~~-uu. Prazepam.
- ~~tt~~-vv. Quazepam.
- ~~uu~~-ww. Temazepam.
- ~~vv~~-xx. Tetrazepam.
- ~~ww~~-yy. Triazolam.
- ~~xx~~-zz. Zaleplon.
- ~~yy~~-aaa. Zolpidem.
- ~~zz~~-bbb. Zopiclone.

5. Fenfluramine. Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: Fenfluramine.
6. Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:
  - a. Cathine.
  - b. Diethylpropion.
  - c. Fencamfamin.
  - d. Fenproporex.
  - e. Mazindol.
  - f. Mefenorex.
  - g. Modafinil.

- h. Pemoline (including organometallic complexes and chelates thereof).
  - i. Phentermine.
  - j. Pipradrol.
  - k. Sibutramine.
  - l. SPA ((-)-1-dimethylamino-1, 2-diphenylethane).
7. Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of ~~pentazocine~~:
- a. Pentazocine, including its salts.
  - b. Butorphanol, including its optical isomers.
8. The board may except by rule any compound, mixture, or preparation containing any depressant substance listed in subsection 2 from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

**SECTION 5. AMENDMENT.** Section 19-03.1-13 of the North Dakota Century Code is amended and reenacted as follows:

**19-03.1-13. Schedule V.**

1. The controlled substances listed in this section are included in schedule V.
2. Schedule V consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.
3. Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing ~~buprenorphine or its~~ any of the following narcotic drugs and their salts.
4. Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which includes one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone.
  - a. Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.
  - b. Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.

- c. Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.
  - d. Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.
  - e. Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.
  - f. Not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.
5. Depressants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:
- a. Lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxy-propionamide].
  - b. Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid].
6. Stimulants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers: Pyrovalerone.

Approved April 19, 2011  
Filed April 19, 2011

## CHAPTER 162

### SENATE BILL NO. 2251

(Senators Olafson, Nodland, Triplett)  
(Representatives Conklin, Maragos, Rohr)

AN ACT to amend and reenact subsection 1 of section 19-03.1-23 and subsection 1 of section 19-03.1-23.1 of the North Dakota Century Code, relating to manufacture, delivery, or possession with intent to manufacture or deliver controlled substances.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 19-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as authorized by this chapter, it is unlawful for any person to willfully, as defined in section 12.1-02-02, manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance, or to deliver, distribute, or dispense a controlled substance by means of the internet, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. Any person who violates this subsection with respect to:
  - a. A controlled substance classified in schedule I or II which is a narcotic drug, or methamphetamine, is guilty of a class A felony and must be sentenced:
    - (1) For a second offense, to imprisonment for at least five years.
    - (2) For a third or subsequent offense, to imprisonment for twenty years.
  - b. Any other controlled substance classified in schedule I, II, or III<sub>7</sub> is guilty of a class B felony, ~~except that any person who delivers one hundred pounds [45.36 kilograms] or more of marijuana is guilty of a class A felony.~~ Except for a person who manufactures, delivers, or possesses with the intent to manufacture or deliver marijuana, any person found guilty under this subdivision must be sentenced:
    - (1) For a second offense, to imprisonment for at least three years.
    - (2) For a third or subsequent offense, to imprisonment for ten 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 six months.
    - (2) For a third offense, to imprisonment for at least one year.
    - (3) For a fourth or subsequent offense, to imprisonment for five years.
  - d. A substance classified in schedule V, is guilty of a class A misdemeanor.

<sup>65</sup> **SECTION 2. AMENDMENT.** Subsection 1 of section 19-03.1-23.1 of the North Dakota Century Code is amended and reenacted as follows:

1. A person who violates section 19-03.1-23 is subject to the penalties provided in subsection 2 if:
  - a. The offense involved the manufacture ~~or distribution of, delivery, or possession, with intent to manufacture or deliver~~ a controlled substance in or on, or within one thousand feet [300.48 meters] of, the real property comprising a public or private elementary or secondary school, public career and technical education school, or a public or private college or university;
  - b. The defendant was at least sixteen years of age at the time of the offense and the offense involved the delivery of a controlled substance to a minor;
  - c. The offense involved:
    - (1) Fifty grams or more of a mixture or substance containing a detectable amount of heroin;
    - (2) Fifty grams or more of a mixture or substance containing a detectable amount of:
      - (a) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;
      - (b) Cocaine, its salts, optical and geometric isomers, and salts of isomers;
      - (c) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or
      - (d) Any compound, mixture, or preparation that contains any quantity of any of the substance referred to in subparagraphs a through c;
    - (3) Five grams or more of a mixture or substance described in paragraph 2 which contains cocaine base;
    - (4) Ten grams or more of phencyclidine or one hundred grams or more of a mixture or substance containing a detectable amount of phencyclidine;
    - (5) One gram, one hundred dosage units, or one-half liquid ounce or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide;
    - (6) Forty grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or ten grams or more of a mixture or substance containing a detectable amount of any analog of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;

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<sup>65</sup> Section 19-03.1-23.1 was also amended by section 1 of Senate Bill No. 2223, chapter 163.

- (7) Fifty grams or more of a mixture or substance containing a detectable amount of methamphetamine;
  - (8) Ten grams, one hundred dosage units, or one-half liquid ounce or more of a mixture or substance containing a detectable amount of 3,4-methylenedioxy-N-methylamphetamine,  $C_{11}H_{15}NO_2$ ;
  - (9) One hundred dosage units or one-half liquid ounce of a mixture or substance containing a detectable amount of gamma-hydroxybutyrate or gamma-butyrolactone or 1,4 butanediol or any substance that is an analog of gamma-hydroxybutyrate;
  - (10) One hundred dosage units or one-half liquid ounce of a mixture or substance containing a detectable amount of flunitrazepam; or
  - (11) Five hundred grams or more of marijuana; or
- d. The defendant had a firearm in the defendant's actual possession at the time of the offense.

Approved April 26, 2011  
Filed April 26, 2011

## CHAPTER 163

### SENATE BILL NO. 2223

(Senators Luick, Miller, Olafson, Murphy)  
(Representatives Wall, Williams)

AN ACT to amend and reenact section 19-03.1-23.1 of the North Dakota Century Code, relating to aggravating factors in drug offenses.

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

<sup>66</sup> **SECTION 1. AMENDMENT.** Section 19-03.1-23.1 of the North Dakota Century Code is amended and reenacted as follows:

#### **19-03.1-23.1. Increased penalties for aggravating factors in drug offenses.**

1. A person who violates section 19-03.1-23 is subject to the penalties provided in subsection 2 if:
  - a. The offense involved the manufacture or distribution of a controlled substance in or on, or within one thousand feet [300.48 meters] of, the real property comprising a child care or preschool facility, public or private elementary or secondary school, public career and technical education school, or a public or private college or university;
  - b. The defendant was at least sixteen years of age at the time of the offense and the offense involved the delivery of a controlled substance to a minor;
  - c. The offense involved:
    - (1) Fifty grams or more of a mixture or substance containing a detectable amount of heroin;
    - (2) Fifty grams or more of a mixture or substance containing a detectable amount of:
      - (a) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;
      - (b) Cocaine, its salts, optical and geometric isomers, and salts of isomers;
      - (c) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or
      - (d) Any compound, mixture, or preparation that contains any quantity of any of the substance referred to in subparagraphs a through c;

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<sup>66</sup> Section 19-03.1-23.1 was also amended by section 2 of Senate Bill No. 2251, chapter 162.



- (3) Five grams or more of a mixture or substance described in paragraph 2 which contains cocaine base;
  - (4) Ten grams or more of phencyclidine or one hundred grams or more of a mixture or substance containing a detectable amount of phencyclidine;
  - (5) One gram, one hundred dosage units, or one-half liquid ounce or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide;
  - (6) Forty grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or ten grams or more of a mixture or substance containing a detectable amount of any analog of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;
  - (7) Fifty grams or more of a mixture or substance containing a detectable amount of methamphetamine;
  - (8) Ten grams, one hundred dosage units, or one-half liquid ounce or more of a mixture or substance containing a detectable amount of 3,4-methylenedioxy-N-methylamphetamine,  $C_{11}H_{15}NO_2$ ;
  - (9) One hundred dosage units or one-half liquid ounce of a mixture or substance containing a detectable amount of gamma-hydroxybutyrate or gamma-butyrolactone or 1,4 butanediol or any substance that is an analog of gamma-hydroxybutyrate;
  - (10) One hundred dosage units or one-half liquid ounce of a mixture or substance containing a detectable amount of flunitrazepam; or
  - (11) Five hundred grams or more of marijuana; or
- d. The defendant had a firearm in the defendant's actual possession at the time of the offense.
2. The offense is:
- a. A class AA felony if the violation of section 19-03.1-23 is designated as a class A felony.
  - b. A class A felony if the violation of section 19-03.1-23 is designated as a class B felony.
  - c. A class B felony if the violation of section 19-03.1-23 is designated as a class C felony.
  - d. A class C felony if the violation of section 19-03.1-23 is designated as a class A misdemeanor.

## CHAPTER 164

### SENATE BILL NO. 2259

(Senators Klein, J. Lee, Robinson)  
(Representatives Keiser, Koppelman, Mueller)

AN ACT to create and enact a new subsection to section 19-03.4-08 of the North Dakota Century Code, relating to records of the sale of methamphetamine precursors; and to amend and reenact subsection 4 of section 19-03.4-08 of the North Dakota Century Code, relating to records of the sale of methamphetamine precursors.

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

**SECTION 1. AMENDMENT.** Subsection 4 of section 19-03.4-08 of the North Dakota Century Code is amended and reenacted as follows:

4. a. When offering scheduled listed chemical products for retail sale, a person shall require, obtain, and make a written record of the identification of the person purchasing the scheduled listed chemical product, the identification being a document issued by a government agency as described in subdivisions a and b of subsection 6, and shall deliver the product directly into the custody of the purchaser.
- b. The person shall maintain a written list of sales that identifies the product by name, the quantity sold, the names and addresses of the purchasers, the dates and times of the sales, a unique identification number relating to the electronic record submitted into the electronic recordkeeping system described in section 2 of this Act, and a notice to a purchaser that the making of false statements or misrepresentations may subject the purchaser to federal and state criminal penalties. The purchaser shall sign the written list of sales and enter the purchaser's name, address, and the date and time of the sale. The person making the sale shall determine that the name entered by the purchaser corresponds with the name on the identification provided by the purchaser and that the date and time of the purchase is correct. The person making the sale shall enter the name of the product and the quantity sold on the list.
- c. Before completing the transaction, the person making the sale shall submit all the information from the written record into the electronic recordkeeping system described in section 2 of this Act.
- d. The person shall maintain the record of identification required by this ~~subsection~~section for three years, after which the record must be destroyed. The person may not use or maintain the record for any private or commercial purpose or disclose the record to any person, except as required by law. The person shall disclose the record, upon request, to a law enforcement agency for a law enforcement purpose. A person who in good faith releases the information in the record of identification to federal, state, or local law enforcement authorities is immune from civil liability for such release unless the release constitutes gross negligence or intentional, wanton, or willful misconduct.

**SECTION 2.** A new subsection to section 19-03.4-08 of the North Dakota Century Code is created and enacted as follows:

13.
  - a. The bureau of criminal investigation shall provide retailers of listed chemical products access to a real-time electronic recordkeeping system to enter into the record system any transaction required to be recorded by subsection 4.
  - b. The real-time electronic recordkeeping system must be maintained in a central repository as defined in subsection 1 of section 19-03.5-01, and must have the capability to calculate state and federal ephedrine base, pseudoephedrine base, and phenylpropanolamine base purchase limitations.
  - c. The electronic recordkeeping system must include a record of all the information in the written record, the unique identification number, and certification that a signature has been obtained.
  - d. The information entered into the electronic recordkeeping system is subject to subdivision d of subsection 4.
  - e. If feasible, the prescription drug monitoring system utilized under chapter 19-03.5 may be used as the electronic recordkeeping system. The bureau of criminal investigation may contract with a private vendor to implement this subsection. A contractor shall comply with the confidentiality requirements of this chapter and is subject to sanctions for violation of confidentiality requirements, including termination of the contract.
  - f. The bureau of criminal investigation may not charge a retailer a fee for the establishment of, maintenance of, or access to, the electronic recordkeeping system.

Approved April 26, 2011  
Filed April 26, 2011

## CHAPTER 165

### SENATE BILL NO. 2151

(Senators J. Lee, Mathern, Uglem)  
(Representatives Delmore, Weisz)

AN ACT to amend and reenact subsection 3 of section 19-03.5-03 of the North Dakota Century Code, relating to access to the prescription drug monitoring program.

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

**SECTION 1. AMENDMENT.** Subsection 3 of section 19-03.5-03 of the North Dakota Century Code is amended and reenacted as follows:

3. Unless disclosure is prohibited by law, the board may provide data in the central repository to:
  - a. A prescriber for the purpose of providing medical care to a patient, a dispenser for the purpose of filling a prescription or providing pharmaceutical care for a patient, a prescriber or dispenser inquiring about the prescriber's or dispenser's own prescribing activity, or a prescriber or dispenser in order to further the purposes of the program;
  - b. An individual who requests the prescription information of the individual or the individual's minor child;
  - c. State boards and regulatory agencies that are responsible for the licensing of individuals authorized to prescribe or dispense controlled substances if the board or regulatory agency is seeking information from the central repository that is relevant to an investigation of an individual who holds a license issued by that board or regulatory agency;
  - d. Local, state, and federal law enforcement or prosecutorial officials engaged in the enforcement of laws relating to controlled substances who seek information for the purpose of an investigation or prosecution of the drug-related activity or probation compliance of an individual;
  - e. The department of human services for purposes regarding the utilization of controlled substances by a medicaid recipient;
  - f. Workforce safety and insurance for purposes regarding the utilization of controlled substances by a claimant;
  - g. Judicial authorities under grand jury subpoena or court order or equivalent judicial process for investigation of criminal violations of controlled substances laws;
  - h. Public or private entities for statistical, research, or educational purposes after the information is de-identified with respect to any prescriber, dispenser, or patient who received a prescription for a controlled substance; ~~or~~

- i. A peer review committee which means any committee of a health care organization, composed of health care providers, employees, administrators, consultants, agents, or members of the health care organization's governing body, which conducts professional peer review as defined in chapter 23-34; or
- j. A licensed addiction counselor for the purpose of providing services for a licensed treatment program in this state.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 166

### HOUSE BILL NO. 1418

(Representatives Kasper, N. Johnson, Keiser, Vigesaa)  
(Senators Wardner, Klein)

AN ACT to provide standards for audits of pharmacy records; and to provide a penalty.

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

##### SECTION 1.

###### Definitions.

For the purposes of this Act:

1. "Entity" means a managed care company, an insurance company, a third-party payer, a pharmacy benefits manager, or any other organization that represents an insurance company, a third-party payer, or a pharmacy benefits manager.
2. "Insurance company" includes any corporation, association, benefit society, exchange, partnership, or individual engaged as principal in the business of insurance.
3. "Managed care company" is an entity that handles both health care and health care financing.
4. "Pharmacy benefits manager" means a person that performs pharmacy benefits management and includes any other person acting for such person under a contractual or employment relationship in the performance of pharmacy benefits management for a managed care company, nonprofit hospital or medical service organization, insurance company, third-party payer, or health program administered by a state agency.
5. "Plan sponsor" means the employer in the case of an employee benefit plan established or maintained by a single employer, or the employee organization in the case of a plan established or maintained by an employee organization, an association, joint board of trustees, committee, or other similar group that establishes or maintains the plan.
6. "Third-party payer" means an organization other than the patient or health care provider involved in the financing of personal health services.

##### SECTION 2.

###### Pharmacy benefits manager audit - Rules.

1. An entity conducting an audit of a pharmacy shall:

- a. If conducting an onsite audit, give the pharmacy a written notice at least fourteen business days before conducting an initial audit.
  - b. If the audit involves clinical or professional judgment, ensure the audit is conducted by or in consultation with a pharmacist licensed in any state and employed by or contracted with the pharmacy benefits manager.
  - c. Limit the audit to no more than twenty-four months from the date that the claim was submitted to or adjudicated by the entity. A claim may not be reviewed that is older than twenty-four months from the date of the audit, unless a longer period is permitted under federal law.
  - d. Refrain from conducting the audit during the first five business days of the month unless otherwise consented to by the pharmacy.
  - e. Refrain from entering the pharmacy area where patient-specific information is available and remain out of sight and hearing range of the pharmacy customers. The pharmacy shall designate an area for auditors to conduct their business.
  - f. Allow the pharmacy to use the records, including a medication administration record, of a hospital, physician, or other authorized practitioner to validate the pharmacy record and delivery.
  - g. Allow the pharmacy to use any legal prescription, including medication administration records, electronic documents, or documented telephone calls from the prescriber or the prescriber's agents, to validate claims in connection with prescriptions and refills or changes in prescriptions.
2. An audit may not allow a recoupment to be assessed for items on the face of a prescription not required by rules adopted by the state board of pharmacy with respect to patient hard copy prescription forms for controlled and uncontrolled drugs.
  3. A finding of overpayment or underpayment may be based only on the actual overpayment or underpayment and not on a projection based on the number of patients served having a similar diagnosis or on the number of similar orders or refills for similar drugs. A calculation of an overpayment may not include dispensing fees, unless a prescription was not dispensed or the prescriber denied authorization. In the case of an error that has no financial harm to the patient or plan, the pharmacy benefits manager may not assess any chargeback. The entity conducting the audit may not use extrapolation in calculating the recoupment or penalties for audits. Any recoupment may not be deducted against future remittances and must be invoiced to the pharmacy for payment. An entity performing an audit may not receive payment based on a percentage of the amount recovered. Interest may not accrue during the audit period, which begins with the notice of audit and ends with the final audit report.
  4. A clerical or recordkeeping error may not be considered fraud, but may be subject to recoupment. A person is not subject to any criminal penalty for a clerical or recordkeeping error without proof of intent to commit fraud.
  5. The parameters of an audit must comply with consumer-oriented parameters based on manufacturer listings or recommendations for the following:

- a. The day supply for eye drops must be calculated so that the consumer pays only one 30-day copayment if the bottle of eye drops is intended by the manufacturer to be a thirty-day supply.
  - b. The day supply for insulin must be calculated so that the highest dose prescribed is used to determine the day supply and consumer copayment.
  - c. The day supply for a topical product must be determined by the judgment of the pharmacist based upon the treated area.
6. Unless an alternate price is published in a provider contract and signed by both parties, the usual and customary price charged by a pharmacy for compounded medications is considered to be the reimbursable cost.
  7. An entity conducting an audit shall utilize the same standards and parameters in auditing a pharmacy the entity uses with other similarly situated pharmacies.
  8. An entity conducting an audit shall establish a written appeals process.

### **SECTION 3.**

#### **Audit reports - Disclosure - Distribution of recouped funds - Review of auditor.**

1. A preliminary audit report must be delivered to the pharmacy within one hundred twenty days after the conclusion of the audit.
2. A pharmacy must be allowed at least sixty days following receipt of the preliminary audit to provide documentation to address any discrepancy found in the audit.
3. A final audit report must be delivered to the pharmacy within ninety days after receipt of the preliminary audit report or final appeal, whichever is later.
4. No chargeback, recoupment, or other penalty may be assessed until the appeal process has been exhausted and the final report issued.
5. An entity shall remit any money due to a pharmacy or pharmacist as a result of an underpayment of a claim within thirty days after the appeals process has been exhausted and the final audit report has been issued.
6. An auditing entity shall provide a copy of the final report to the plan sponsor for which claims were included in the audit. Any funds recouped must be returned to the plan sponsor.

### **SECTION 4.**

#### **Applicability.**

1. This Act applies to claims adjudicated after July 31, 2011.
2. This Act does not apply to any audit, review, or investigation that is initiated based upon alleged fraud, willful misrepresentation, or abuse, including:
  - a. Insurance fraud as defined in chapter 26.1-02.1.



- b. Billing for services not furnished or supplies not provided.
  - c. Billing that appears to be a deliberate application for duplicate payment for the same services or supplies, billing both the beneficiary and the pharmacy benefits manager or payer for the same service.
  - d. Altering claim forms, electronic claim records, or medical documentation to obtain a higher payment amount.
  - e. Soliciting, offering, or receiving a kickback or bribe.
  - f. Participating in any scheme that involves collusion between a provider and a beneficiary or between a supplier and a provider which results in higher costs or charges to the entity.
  - g. Misrepresenting a date or description of services furnished or the identity of the beneficiary or the individual who furnished the services.
  - h. Billing for a prescription without a prescription on file in a situation in which an over-the-counter item is dispensed.
  - i. Dispensing a prescription using an out-of-date drug.
  - j. Billing with an incorrect national drug code or billing for a brand name when a generic drug is dispensed.
  - k. Failing to credit the payer for a medication or a portion of a prescription that was not obtained by the payer within fourteen days unless extenuating circumstances exist.
  - l. Billing the payer a higher price than the usual and customary charge of the pharmacy to the general public.
  - m. Billing for a product without proof that the purchaser purchased the product.
3. Any case of suspected fraud or violation of law must be reported by an auditor to the licensing board.
4. This Act does not apply to state medicaid programs.

## **SECTION 5.**

### **Penalty.**

Any person violating this Act is guilty of a class B misdemeanor.

## CHAPTER 167

### SENATE BILL NO. 2127

(Senators Lyson, Oehlke, Wardner)  
(Representative Onstad)

AN ACT to amend and reenact section 19-10-03.1 of the North Dakota Century Code, relating to ethanol dispensing unit labeling requirements.

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

**SECTION 1. AMENDMENT.** Section 19-10-03.1 of the North Dakota Century Code is amended and reenacted as follows:

#### **19-10-03.1. Retail sale of alcohol-blended gasoline - Label requirements.**

~~No~~A dealer may not sell at retail alcohol-blended gasoline unless the dispensing unit and any price advertising bear the name of the alcohol blended with the gasoline if the alcohol-blended gasoline consists of one percent or more by volume of any alcohol and the dispensing unit bears the ethanol promotion and information council label or logo. The disclosure must be in letters at least the same size as those used for the label of the basic grade of gasoline and must be next to the gasoline grade label. A producer of alcohol-blended gasoline may provide a retailer with a label promoting the benefits of alcohol-blended gasoline, if the label at least meets the requirements of this section.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 168

### HOUSE BILL NO. 1321

(Representatives Belter, D. Johnson)  
(Senators Flakoll, Wanzek)

AN ACT to create and enact chapter 19-20.3 of the North Dakota Century Code, relating to anhydrous ammonia risk management program requirements; to amend and reenact sections 19-20.1-06, 19-20.2-03, 19-20.2-07, 19-20.2-07.1, 19-20.2-08.4, 19-20.2-09, and 19-20.2-11 of the North Dakota Century Code, relating to anhydrous ammonia facility inspections; to repeal section 19-20.2-08.1 of the North Dakota Century Code, relating to the anhydrous ammonia storage facility inspection fund; to provide an effective date; and to declare an emergency.

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

<sup>67</sup> **SECTION 1. AMENDMENT.** Section 19-20.1-06 of the North Dakota Century Code is amended and reenacted as follows:

##### **19-20.1-06. Inspection fees and tonnage reports.**

There must be paid to the commissioner for all fertilizers, soil amendments, or plant amendments distributed in this state an inspection fee at the rate of twenty cents per ton [907.18 kilograms]. The inspection fee may not be less than ten dollars. Sales to manufacturers or exchanges between them are exempt from the inspection fee. Fees collected under this section must be ~~used for the payment of the costs of inspection, sampling, and analysis, and other expenses necessary for the administration of this chapter~~ forwarded to the state treasurer for deposit in the environment and rangeland protection fund.

Individual packages of fertilizers, soil amendments, or plant amendments sold exclusively in packages of twenty-five pounds [11.34 kilograms] or less are exempt from the provisions of this section. If a person sells fertilizer, soil amendments, or plant amendments in packages of twenty-five pounds [11.34 kilograms] or less and in packages over twenty-five pounds [11.34 kilograms], that portion sold in packages over twenty-five pounds [11.34 kilograms] is subject to the same inspection fee of twenty cents per ton [907.18 kilograms], including the minimum ten dollar fee, as provided in this chapter.

Every licensed person who distributes a fertilizer, soil amendment, or plant amendment to a nonlicensed person in this state shall file with the commissioner, on forms furnished by the commissioner, an annual statement for the calendar year, setting forth the number of net tons [kilograms] of each fertilizer, soil amendment, or plant amendment so distributed in this state during the period. A licensed end user shall report all sales and purchases and pay the appropriate tonnage tax. The statement is due on or before January thirty-first of the following year. The person filing the statement shall pay the inspection fee at the rate stated in this section. If the tonnage statement is not filed and the payment of inspection fee is not made by January thirty-first, a collection fee amounting to ten percent, minimum ten dollars, of

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<sup>67</sup> Section 19-20.1-06 was also amended by section 15 of Senate Bill No. 2009, chapter 35.

the amount must be assessed against the licensee, and the amount of fees due constitute a debt and become the basis of a judgment against the licensee.

**SECTION 2. AMENDMENT.** Section 19-20.2-03 of the North Dakota Century Code is amended and reenacted as follows:

**19-20.2-03. License required - Anhydrous ammonia facilities constructed after June 30, 1985.**

No anhydrous ammonia storage facility may be operated without a license issued by the agriculture commissioner and the board of county commissioners of the county in which the facility is constructed. An application for a license to site and operate an anhydrous ammonia storage facility must be made to the agriculture commissioner and to the board of county commissioners. The commissioner or the board may deny a license for failure to remit the proper fee to the agriculture commissioner, for failure to comply with the siting requirements of this chapter and rules adopted pursuant to this chapter if constructed after June 30, 1985, or for failure to comply with local siting requirements. The agriculture commissioner also may deny a license if the ~~chief boiler inspector does not certify that the facility meets~~does not meet the initial inspection standards required by this chapter and by any rules adopted pursuant to this chapter. In order to obtain a license, an individual shall submit two sets of drawings or photographs and signed affidavits stating and showing the facility has been measured and meets the siting requirements along with the application for license. The drawings or photographs must show the proposed location of the tank, the locations, and the surroundings in all directions. One set of drawings or photographs is for the agriculture commissioner and the other is for the board of county commissioners.

**SECTION 3. AMENDMENT.** Section 19-20.2-07 of the North Dakota Century Code is amended and reenacted as follows:

**19-20.2-07. Inspection.**

1. ~~The chief boiler inspector and the insurance commissioner shall cooperate with the agriculture commissioner to~~shall develop and implement an initial and periodic inspection program for anhydrous ammonia storage facilities. ~~The chief boiler inspector shall inform the agriculture commissioner of any violation of this chapter that may arise in the course of an inspection of an anhydrous ammonia storage facility.~~
2. The ~~insurance~~agriculture commissioner shall inspect each anhydrous ammonia storage facility at least once every five years and may inspect any farm transportation wagon or vehicle designed to apply anhydrous ammonia which is in the vicinity of an anhydrous ammonia storage facility.
3. The ~~insurance~~agriculture commissioner may inspect any anhydrous ammonia storage facility where the commissioner has reason to believe violations of the safety standards under this chapter exist.
4. The agriculture commissioner may revoke or suspend the license of any anhydrous ammonia storage facility violating this chapter or the rules adopted under this chapter. The commissioner may order the discontinuance of use of any farm transportation wagon or implement of husbandry which is found unsafe or hazardous.

**SECTION 4. AMENDMENT.** Section 19-20.2-07.1 of the North Dakota Century Code is amended and reenacted as follows:

**19-20.2-07.1. Reinstalled and secondhand anhydrous ammonia storage containers - Requirement.**

1. Before anhydrous ammonia may be stored in a reinstalled or secondhand container, including a nurse tank, the person intending to store the anhydrous ammonia shall furnish the ~~chief boiler inspector~~ agriculture commissioner with:
  - a. Evidence that the container is registered with the national board of boiler and pressure vessel inspectors; or
  - b. The manufacturer's data report for the container.
2. Subsection 1 is not applicable to the owner of an anhydrous ammonia storage container installed in this state before November 1, 1987, unless the storage container is reinstalled at another location.

**SECTION 5. AMENDMENT.** Section 19-20.2-08.4 of the North Dakota Century Code is amended and reenacted as follows:

**19-20.2-08.4. Hydrostatic test procedures.**

Any hydrostatic test conducted under section 19-20.2-05 must comply with the requirements of the national board inspection code (ANSI-NB 23) and be conducted in a manner approved by the ~~chief boiler inspector~~ agriculture commissioner.

**SECTION 6. AMENDMENT.** Section 19-20.2-09 of the North Dakota Century Code is amended and reenacted as follows:

**19-20.2-09. Enforcement.**

1. The agriculture commissioner shall enforce the requirements of this chapter and any rules issued under it.
2. The commissioner may bring an action to enjoin the violation or threatened violation of this chapter, or any rule issued pursuant to this chapter, in the district court of the county in which the violation occurs or is about to occur.
3. The agriculture commissioner may issue a cease and desist order to any person allegedly violating this chapter. If any person violates the cease and desist order, the commissioner shall file the appropriate criminal complaint.
4. For the purpose of carrying out this chapter, the agriculture commissioner ~~and the insurance commissioner~~ may enter upon any public or private premises at reasonable times to:
  - a. Inspect any equipment subject to this chapter and the premises on which the equipment is stored or used.
  - b. Inspect or investigate complaints.
  - c. Inspect any premises or other place where anhydrous ammonia or devices are held for distribution, sale, or use.

5. If a civil penalty pursuant to section 19-20.2-10 is imposed by the agriculture commissioner through an administrative hearing and the civil penalty is not paid, the commissioner may collect the civil penalty by a civil action in any appropriate court. Additionally, the commissioner may suspend or revoke a license issued pursuant to this chapter for failure to pay a civil penalty within thirty days after a final determination is made.

**SECTION 7. AMENDMENT.** Section 19-20.2-11 of the North Dakota Century Code is amended and reenacted as follows:

**19-20.2-11. Rules relating to security measures for nurse tanks.**

The ~~insurance~~agriculture commissioner shall adopt rules identifying a critical methamphetamine use zone in the state and establishing appropriate security measures to be implemented by the owners and users of anhydrous ammonia nurse tanks located within the zone as a pilot project. The ~~insurance~~agriculture commissioner may establish the duration of the pilot project, and may require the locking of anhydrous ammonia nurse tanks or other security measures as are deemed necessary to curb the illegal theft of anhydrous ammonia within the zone. The ~~insurance~~agriculture commissioner shall enforce any rules adopted pursuant to this section.

**SECTION 8.** Chapter 19-20.3 of the North Dakota Century Code is created and enacted as follows:

**19-20.3-01. Risk management program - Anhydrous ammonia.**

In order to determine compliance with the risk management program requirements set forth in section 112 of the Clean Air Act of 1990 [42 U.S.C. 7401 et seq.], as amended through June 30, 2011, the agriculture commissioner may:

1. Request information from any person that:
  - a. Sells, stores, or handles anhydrous ammonia for agricultural purposes:  
and
  - b. Is required to comply with the risk management program requirements:
2. Conduct inspections of any person that:
  - a. Sells, stores, or handles anhydrous ammonia for agricultural purposes:  
and
  - b. Is required to comply with the risk management program requirements:  
and
3. Obtain and review risk management plans required under 40 Code of Federal Regulations, part 68, as amended through June 30, 2011, and other records applicable to any person that:
  - a. Sells, stores, or handles anhydrous ammonia for agricultural purposes:  
and
  - b. Is required to comply with the risk management program requirements.

**19-20.3-02. Risk management program - Enforcement authority.**

If the agriculture commissioner determines that there is noncompliance on the part of any person that sells, stores, or handles anhydrous ammonia for agricultural purposes and that is required to comply with the risk management program requirements referenced in section 19-20.3-01, the agriculture commissioner may:

1. Bring an action to enjoin a violation or a threatened violation;
2. Issue a cease and desist order; and
3. Impose a civil penalty through an administrative hearing in an amount not exceeding ten thousand dollars per day for each violation.

**SECTION 9. REPEAL.** Section 19-20.2-08.1 of the North Dakota Century Code is repealed.

**SECTION 10. CONTINGENT EFFECTIVE DATE.** Section 8 of this Act becomes effective on the date that the governor certifies to the legislative council that the agriculture commissioner has been delegated by the administrator of the environmental protection agency to implement and enforce the risk management program as it pertains to the sale, storage, and handling of anhydrous ammonia for agricultural purposes, in accordance with section 112 of the Clean Air Act of 1990 [42 U.S.C. 7401 et seq.], as amended through June 30, 2011.

**SECTION 11. EFFECTIVE DATE.** Sections 1 and 9 of this Act become effective on July 1, 2011. Sections 2 through 7 of this Act become effective on January 1, 2012.

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

Approved April 18, 2011  
Filed April 18, 2011

# GAME, FISH, PREDATORS, AND BOATING

## CHAPTER 169

### SENATE BILL NO. 2352

(Senators Oehlke, Cook, Nelson)  
(Representatives Delzer, D. Johnson)

AN ACT to create and enact a new subsection to section 20.1-01-02 and a new section to chapter 20.1-01 of the North Dakota Century Code, relating to hunting through the internet; and to provide a penalty.

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

<sup>68</sup> **SECTION 1.** A new subsection to section 20.1-01-02 of the North Dakota Century Code is created and enacted as follows:

"Hunt through the internet" means to hunt wildlife in real time using internet services to remotely control actual firearms and to remotely discharge live ammunition allowing a person who is not physically present to take wildlife. The term includes using any remotely controlled device to hunt the animal such as a hand-held communication device, cellular telephone, or global-positioning device.

**SECTION 2.** A new section to chapter 20.1-01 of the North Dakota Century Code is created and enacted as follows:

#### Hunting through the internet prohibited - Penalty.

1. A person may not:
  - a. Hunt through the internet;
  - b. Host a hunt through the internet;
  - c. Import, export, or possess wildlife or any part thereof which has been taken by a hunt through the internet; or
  - d. Otherwise enable another person to hunt through the internet.
2. A person who violates this section is guilty of a class C felony.

Approved April 19, 2011  
Filed April 20, 2011

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<sup>68</sup> Section 20.1-01-02 was also amended by section 1 of Senate Bill No. 2227, chapter 173.



## CHAPTER 170

### HOUSE BILL NO. 1454

(Representatives Damschen, Weisz)

AN ACT to amend and reenact sections 20.1-01-08 and 20.1-01-09 and subsection 3 of section 20.1-05-04 of the North Dakota Century Code, relating to the taking of beaver.

#### 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 individual to use a lantern, spotlight, or other artificial light to assist the person in pursuing and shooting on the person's premises any coyote, fox, skunk, mink, raccoon, beaver, weasel, owl, rabbit, or other predatory animal or bird, attacking and attempting to destroy the person's poultry, livestock, or other property. It is permissible to use an artificial light with a power source of not more than six volts while hunting afoot for raccoon or beaver during the open season on the animal. A red or amber filter must be placed on any artificial light used in the hunting of raccoon or beaver, except when taking a raccoon treed or at bay.

**SECTION 2. AMENDMENT.** Section 20.1-01-09 of the North Dakota Century Code is amended and reenacted as follows:

##### **20.1-01-09. Types of guns lawfully usable in taking raccoon and beaver with flashlight - Penalty.**

In the killing, shooting, pursuing, taking or in attempting to take raccoon or beaver with the use of a flashlight with a power source of not over six volts, it is illegal to use a rifle or handgun capable of firing a shell larger than a twenty-two caliber [5.59 millimeter] long rifle shell, or a shotgun larger than four-ten gauge [10.41 millimeters]. An individual who violates this section is guilty of a class 1 noncriminal offense.

**SECTION 3. AMENDMENT.** Subsection 3 of section 20.1-05-04 of the North Dakota Century Code is amended and reenacted as follows:

3. Engage in the practice commonly known as shining for deer. 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.

Approved April 4, 2011  
Filed April 4, 2011

## CHAPTER 171

### HOUSE BILL NO. 1393

(Representatives Kilichowski, Porter, Hanson)  
(Senators Lyson, Uglem, Schneider)

AN ACT to create and enact a new section to chapter 20.1-01 of the North Dakota Century Code, relating to legal weapons for hunting purposes.

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

**SECTION 1.** A new section to chapter 20.1-01 of the North Dakota Century Code is created and enacted as follows:

#### **Crossbow legal weapon.**

Notwithstanding any other provision of law, an individual may use a crossbow during the duration of any deer gun season the individual possesses the appropriate deer gun license.

Approved April 19, 2011

Filed April 20, 2011

## CHAPTER 172

### HOUSE BILL NO. 1415

(Representatives S. Meyer, Anderson, DeKrey, Metcalf)  
(Senators Hogue, Lyson)

AN ACT to create and enact a new subsection to section 20.1-02-04 of the North Dakota Century Code, relating to the duty of the game and fish director to issue deer licenses to the wounded warrior project.

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

**SECTION 1.** A new subsection to section 20.1-02-04 of the North Dakota Century Code is created and enacted as follows:

Issue four any deer licenses annually to the wounded warrior project for distribution. A license issued under this subsection is valid from the opening of the youth deer season through the close of the deer season.

Approved April 11, 2011  
Filed April 11, 2011

## CHAPTER 173

### SENATE BILL NO. 2227

(Senators Wanzek, Klein, Warner)  
(Representatives Brandenburg, DeKrey, Weisz)

AN ACT to create and enact two new subsections to section 20.1-01-02, a new subsection to section 20.1-02-05, and a new section to chapter 20.1-02 of the North Dakota Century Code, relating to definitions and powers of the director of the game and fish department; to amend and reenact subsection 17 of section 20.1-02-05 and sections 20.1-02-28 and 20.1-05-02 of the North Dakota Century Code, relating to the private land habitat and access improvement program, the deerproof hay yard program, and culpability requirement for unlawfully taking big game; and to declare an emergency.

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

<sup>69</sup> **SECTION 1.** Two new subsections to section 20.1-01-02 of the North Dakota Century Code are created and enacted as follows:

"Crops" means any plant that has been harvested, collected, or stored as livestock feed, fodder, or fuel.

"Depredation" means damage to or destruction of private property.

<sup>70</sup> **SECTION 2.** A new subsection to section 20.1-02-05 of the North Dakota Century Code is created and enacted as follows:

Authorize individuals with valid antlerless deer licenses to take deer on private lands determined by the director to be severely impacted by deer. Before authorizing individuals under this subsection, the director must attempt other measures and determine them to be ineffective. A landowner dissatisfied with a decision of the director under this subsection may submit the decision to the agricultural mediation service for mandatory mediation. A decision of an agricultural mediation service negotiator is subject to review by the credit review board. A decision of the credit review board under this subsection is final. The director may authorize individuals to take deer under this subsection between December first of a year through January fifteenth of the following year.

<sup>71</sup> **SECTION 3. AMENDMENT.** Subsection 17 of section 20.1-02-05 of the North Dakota Century Code is amended and reenacted as follows:

17. Carry out a private land habitat and access improvement program by:

<sup>69</sup> Section 20.1-01-02 was also amended by section 1 of Senate Bill No. 2352, chapter 169.

<sup>70</sup> Section 20.1-02-05 was also amended by section 3 of Senate Bill No. 2227, chapter 173.

<sup>71</sup> Section 20.1-02-05 was also amended by section 2 of Senate Bill No. 2227, chapter 173.

- a. Entering cost-sharing, habitat enhancement, and access agreements with landowners or agencies working on private land to help defray all or a portion of their share of local, state, or federally sponsored conservation practices considered beneficial to fish and wildlife.
- b. Leasing and developing fish and wildlife habitat or sport fishing areas on private land. ~~Public~~Except for purposes of subdivision i, public access to leased land may not be prohibited.
- c. Carrying out practices that will alleviate depredations caused by predatory animals and big game animals.
- d. Publishing a brochure on an annual basis describing areas funded from the game and fish department private land habitat and access improvement fund which are open to public access in this state.
- e. Receiving advice from the game and fish advisory board concerning expenditures from the game and fish department private land habitat and access improvement fund.
- f. Working with livestock producers experiencing chronic deer depredation problems to develop site-specific deer depredation management plans.
- g. Giving first consideration to producers impacted by deer foraging on stored winter forage when purchasing winter deer management supplies.
- h. Making available the sum of one million dollars from each biennial game and fish department appropriation to be used to provide feeding and other winter management practices to alleviate depredation caused by big game animals. Any unexpended funds under this subdivision, up to two million dollars, are not subject to section 54-44.1-11 and may be carried forward for expenditure in future bienniums.
- i. Making available the sum of one hundred thousand dollars from each biennial game and fish department appropriation to be used for food plots on private property for the purpose of providing winter feed. These food plots are not subject to public access considerations.

**SECTION 4. AMENDMENT.** Section 20.1-02-28 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-02-28. Deerproof hay yard program.**

Within legislative appropriations, the director shall provide for a deerproof hay yard program. The deerproof hay yard program must provide materials and supplies at no cost and construction cost-share assistance to landowners for the establishment of deerproof hay yards to protect crops, hay, or feed on private property with deer depredation problems. A landowner who allows commercial hunting for big game on a majority of acres owned and operated in exchange for compensation and who posts a majority of the acres owned and operated by that person to prohibit big game hunting is not eligible to participate in the deerproof hay yard program. The department shall establish a prorated repayment system over a three-year period. For winter management program purposes of this section, a person may not willfully hunt, harass, chase, pursue, take, attempt to take, possess, transport, ship, convey by common carrier, sell, barter, or exchange a deer except as provided in this title.

**SECTION 5.** A new section to chapter 20.1-02 of the North Dakota Century Code is created and enacted as follows:

**Deer reduction programs.**

The director or the director's designee may authorize an individual to euthanize injured, sick, or emaciated deer under conditions determined by the director. The director may authorize targeted deer reduction programs to alleviate deer depredation.

**SECTION 6. AMENDMENT.** Section 20.1-05-02 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-05-02. Big game animals protected.**

~~No~~Except as otherwise provided in section 20.1-02-28, a person may not hunt, harass, chase, pursue, take, attempt to take, possess, transport, ship, convey by common or private carrier, sell, barter, or exchange ~~any~~a big game animal except as provided in this title.

**SECTION 7. EMERGENCY.** This Act is declared to be an emergency measure.

Approved May 17, 2011  
Filed May 17, 2011

## CHAPTER 174

### HOUSE BILL NO. 1407

(Representatives D. Johnson, Hofstad, Weisz)  
(Senators Taylor, Oehlke)

AN ACT to amend and reenact section 20.1-03-07.1 of the North Dakota Century Code, relating to hunting of Canada geese by nonresidents; to provide for a study; 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 20.1-03-07.1 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-03-07.1. (Effective through July 31, 2013) Nonresident waterfowl hunting license required.**

Except as provided in sections 20.1-02-05, 20.1-03-07.2, and 20.1-03-07.3, a nonresident may not hunt waterfowl unless that individual first obtains a nonresident waterfowl hunting license. However, a nonresident may hunt cranes after first obtaining a nonresident waterfowl hunting license or a nonresident small game hunting license. Except as otherwise provided in this section, the nonresident waterfowl hunting license entitles the nonresident to hunt waterfowl for any period of fourteen consecutive days or any two periods of seven consecutive days each. A license authorizing the fourteen-day hunting period allows hunting in a specified waterfowl hunting zone. A license authorizing two 7-day hunting periods allows hunting in a specified zone during each period. Upon payment of the fee for a statewide nonresident waterfowl hunting license, a nonresident may hunt waterfowl in any zone. Forty dollars of the fee for a statewide nonresident waterfowl license must be used for the private land open to sportsmen program. The governor, in the governor's proclamation, shall specify various waterfowl hunting zones for which nonresident waterfowl hunting licenses will be available, and may specify the number of licenses which may be issued in each zone and the manner in which they are to be issued. A nonresident is entitled to purchase only one nonresident waterfowl hunting license per year. The fourteen-day and two 7-day hunting period restrictions do not apply to nonresidents hunting in Richland and Sargent Counties or in Benson, Ramsey, or Towner Counties during the early September Canada goose season.

**(Effective after July 31, 2013) Nonresident waterfowl hunting license required.** Except as provided in sections 20.1-02-05, 20.1-03-07.2, and 20.1-03-07.3, a nonresident may not hunt waterfowl unless that individual first obtains a nonresident waterfowl hunting license. However, a nonresident may hunt cranes after first obtaining a nonresident waterfowl hunting license or a nonresident small game hunting license. Except as otherwise provided in this section, the nonresident waterfowl hunting license entitles the nonresident to hunt waterfowl for any period of fourteen consecutive days or any two periods of seven consecutive days each. A license authorizing the fourteen-day hunting period allows hunting in a specified waterfowl hunting zone. A license authorizing two 7-day hunting periods allows hunting in a specified zone during each period. Upon payment of the fee for a statewide nonresident waterfowl hunting license, a nonresident may hunt waterfowl in any zone. Forty dollars of the fee for a statewide nonresident waterfowl license must

be used for the private land open to sportsmen program. The governor, in the governor's proclamation, shall specify various waterfowl hunting zones for which nonresident waterfowl hunting licenses will be available, and may specify the number of licenses which may be issued in each zone and the manner in which they are to be issued. A nonresident is entitled to purchase only one nonresident waterfowl hunting license per year.

**SECTION 2. GAME AND FISH STUDY.** The game and fish department shall conduct a study of goose hunting in this state. The department must track the number of resident and nonresident goose hunters and the number of geese taken by county. The department shall report its findings to the legislative management by September 1, 2012.

Approved April 4, 2011

Filed April 4, 2011



## CHAPTER 175

### HOUSE BILL NO. 1181

(Representatives Nathe, Headland)  
(Senators Freborg, Hogue, Schaible, Stenehjem)

AN ACT to amend and reenact subsection 1 of section 20.1-03-11 of the North Dakota Century Code, relating to youth antelope and deer hunting.

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

<sup>72</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 20.1-03-11 of the North Dakota Century Code is amended and reenacted as follows:

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 if that individual's fourteenth birthday does not occur on or before the opening date of the respective big game hunting season provided, however, that an individual who is under fourteen years of age and who will be eligible to hunt on the opening date of or during the regular deer hunting season may hunt during the youth deer 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 twelfth birthday occurs on or before the opening date of or during the youth deer hunting season but is younger than fourteen years of age is entitled to receive a statewide white-tailed antlerless deer permit but may hunt only in the youth deer hunting season.
  - b. An individual whose twelfth birthday occurs on or before the opening date of or during the antelope hunting season but is younger than fourteen years of age is entitled to apply for an antelope permit.
  - 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.

Approved April 4, 2011

Filed April 4, 2011

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<sup>72</sup> Section 20.1-03-11 was also amended by section 1 of House Bill No. 1180, chapter 176.

## CHAPTER 176

### HOUSE BILL NO. 1180

(Representatives Drovdal, Schatz)  
(Senator Nodland)

AN ACT to amend and reenact subsection 7 of section 20.1-03-11 of the North Dakota Century Code, relating to landowner preference licenses to hunt elk.

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

<sup>73</sup> **SECTION 1. AMENDMENT.** Subsection 7 of section 20.1-03-11 of the North Dakota Century Code is amended and reenacted as follows:

7. A resident who has executed a lease for at least one hundred sixty acres [64.75 hectares] of land and who actively farms or ranches that land or a resident who holds title to at least one hundred sixty acres [64.75 hectares] of land is eligible to apply for a license to hunt elk upon filing a signed application describing that land and payment of the fee requirement for a resident big game license. The land must be within a unit open for the hunting of elk. The license must include a legal description of the eligible land described in the completed application and may be used to hunt elk within the district or unit in which the land described in the completed application is located. Upon request, a lessee shall provide proof that the land described in the completed application is leased for agricultural purposes. A resident who is eligible for a license under this subsection may transfer that eligibility for the license to a spouse or legal dependent residing customarily with the resident, but no more than one license may be issued under this subsection for any qualifying land. If not otherwise specified in an agricultural lease, the landowner is entitled to receive the license. The governor's proclamation may restrict the districts or units for which preferential licenses may be issued under this subsection. ~~However, the governor shall give primary consideration to allowing preferential licenses under this subsection to be issued to persons owning or leasing land in the following areas: that portion of township one hundred forty seven north, range ninety five west which is north and west of state highway 22; township one hundred forty six north, range ninety six west; township one hundred forty seven north, range ninety six west; township one hundred forty eight north, range ninety six west; township one hundred forty six north, range ninety seven west; township one hundred forty seven north, range ninety seven west; and township one hundred forty eight north, range ninety seven west of the fifth principal meridian, in Dunn County; the west one-half of township one hundred forty nine north, range ninety five west; township one hundred forty nine north, range ninety six west; and township one hundred forty nine north, range ninety seven west of the fifth principal meridian, in McKenzie County; and other areas within a district or unit open for hunting of elk as prescribed in the governor's proclamation.~~ The number of licenses issued under this subsection for each designated district or unit for hunting elk may not exceed fifteen percent of the total licenses prescribed in the governor's proclamation for each district or unit. If the number of

<sup>73</sup> Section 20.1-03-11 was also amended by section 1 of House Bill No. 1181, chapter 175.

applications for licenses to be issued under this subsection in a district or unit exceeds the maximum number of such licenses allocated to that district or unit, the licenses to be issued must be issued by weighted lottery as prescribed in the governor's proclamation. ~~A person who receives a license under this subsection is eligible to participate in a weighted lottery with other landowners who have received licenses under this section. The director shall issue any licenses not issued to an individual who has not previously received a license under this section to individuals who have received a license under this section in a weighted lottery giving preference each year to those individuals who have not received a second license.~~ Licenses to hunt elk may not be issued under this subsection when the total number of licenses prescribed in the governor's proclamation is ~~less~~fewer than twenty. ~~If a person receives a license under this subsection, the person's spouse, children, and parents living with the person are not eligible to receive a license under this subsection for the district or unit in which the land described in the completed application is located, unless the person has sold or otherwise transferred the person's rights to the land described in the completed application.~~ The director may issue special elk depredation management licenses to landowners in designated areas around Theodore Roosevelt national park upon payment of the fee requirement for a resident big game license. The provisions of this section governing the number of licenses issued for each designated district or unit for hunting elk do not apply to special elk depredation management licenses and a person who receives such a license under this subsection is eligible to apply for a license to hunt elk in future years and is eligible to participate in the raffle under section 20.1-08-04.6. 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.

Approved March 28, 2011

Filed March 28, 2011

## **CHAPTER 177**

### **HOUSE BILL NO. 1288**

(Representatives Kasper, Headland, Mueller)  
(Senators Fischer, Hogue, Olafson)

AN ACT to repeal section 2 of chapter 207 of the 2009 Session Laws, relating to licensing of outfitters.

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

**SECTION 1. REPEAL.** Section 2 of chapter 207 of the 2009 Session Laws is repealed.

Approved March 29, 2011  
Filed March 29, 2011

# GOVERNMENTAL FINANCE

## CHAPTER 178

### HOUSE BILL NO. 1112

(Judiciary Committee)  
(At the request of the Bank of North Dakota)

AN ACT to amend and reenact section 21-04-09 and subsection 1 of section 21-06-07 of the North Dakota Century Code, relating to public deposits.

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

**SECTION 1. AMENDMENT.** Section 21-04-09 of the North Dakota Century Code is amended and reenacted as follows:

#### **21-04-09. Pledge of security in place of depository bond.**

The board of any public corporation may accept from any financial institution, as security for repayment of deposits, a pledge of securities in lieu of a personal or surety bond. When securities are so pledged to the board of any public corporation, the board shall require security in the amount of one hundred ten dollars for every one hundred dollars of public deposits. Securities that are eligible for the pledge are bills, notes, or bonds issued by the United States government, its agencies or instrumentalities, all bonds and notes guaranteed by the United States government, irrevocable standby letters of credit issued by federal home loan banks of a rating of AA or better by Moody's Investors Service, Inc. or Standard & Poor's Corporation, federal land bank bonds, bonds, notes, warrants, certificates of indebtedness, insured certificates of deposit, shares of investment companies registered under the Investment Companies Act of 1940, letters of credit issued by the Bank of North Dakota, and all other forms of securities issued by the state of North Dakota, its boards, agencies, or instrumentalities, or by any county, city, township, school district, park district, or other political subdivision of the state of North Dakota, whether payable from special revenues or supported by the full faith and credit of the issuing body, and bonds issued by any other state of the United States or such other securities approved by the banking board. The securities and securities sold under agreements to repurchase as described in section 21-06-07 must be delivered to and held for safekeeping by any financial institution, other than the depository, which the depository and the public corporation may agree upon. Whenever any securities are so deposited for safekeeping with any custodian, the custodian shall issue a receipt therefor jointly to the depository and the public corporation.

Any financial institution pledging securities, at any time it deems it advisable or desirable, and without the consent of the board of the public corporation, may substitute other eligible securities for all or any part of the securities pledged. The securities substituted must, at the time of the substitution, have a market value at least equal to the market value of the securities released and delivered to the depository.

In the event of the substitution the holder or custodian of the pledged securities shall, on the same day, forward by ~~registered mail~~ or electronic transmission to the public corporation and the depository financial institution a receipt specifically describing and identifying both the securities substituted and those released and returned to the depository financial institution.

A depository financial institution may fulfill the pledge of securities requirements of this section by maintaining a security pledge schedule that establishes the following:

1. The names of all public bodies maintaining deposits with the financial institution.
2. The amount of each deposit maintained by each public body.
3. The amount of federal deposit insurance corporation insurance applied to each account.
4. The net deposits exceeding federal deposit insurance corporation coverage for each account.
5. The amount of net deposit exceeding federal deposit insurance corporation deposit insurance multiplied by one hundred ten percent for each account.
6. The amount of securities needed to be pledged to fulfill the requirements of this section.
7. The total number of qualified securities pledged by the financial institution under the requirements of this section.

A financial institution is in compliance with this section as long as the security pledge schedule discloses the total qualified securities pledged in excess of the total pledges needed for a total amount of deposits maintained by all the public bodies with the financial institution as verified by the custodian of the securities every three months and copies thereof are provided to the custodian of the securities and to each of the public corporations maintaining deposits with the financial institution.

No pledge of security or bond may be required for any funds deposited with a financial institution directly or by a financial institution's participation as a member of a ~~reciprocal~~ deposit placement service to the extent that the deposits are insured or guaranteed by the federal deposit insurance corporation or the national credit union administration as determined by the commissioner of financial institutions or an insurance company that is qualified to offer excess deposit insurance in this state and which has a rating of A- or better by A.M. Best Company Inc., or the equivalent rating by another recognized rating organization as determined by the insurance commissioner.

**SECTION 2. AMENDMENT.** Subsection 1 of section 21-06-07 of the North Dakota Century Code is amended and reenacted as follows:

1. Counties, cities, school districts, park districts, and townships in this state may invest moneys in their general fund, or balances in any special or temporary fund, in:
  - a. Bonds, treasury bills and notes, or other securities that are a direct obligation of, or an obligation insured or guaranteed by, the treasury of the

- United States, or its agencies, instrumentalities, or organizations created by an act of Congress.
- b. Securities sold under agreements to repurchase written by a financial institution in which the underlying securities for the agreement to repurchase are of a type listed above.
  - c. Certificates of deposit fully insured by the federal deposit insurance corporation or by the state.
  - d. Obligations of the state.
  - e. Certificates of deposit fully insured or guaranteed by the federal deposit insurance corporation and placed for the benefit of the public depositor by a public depository through an appropriate ~~reciprocal~~ deposit placement service as determined by the commissioner of financial institutions.

Approved April 27, 2011  
Filed April 27, 2011

## CHAPTER 179

### SENATE BILL NO. 2302

(Senators Hogue, Stenehjem, Christmann)  
(Representatives Carlson, Grande, Vigesaa)

AN ACT to create and enact a new section to chapter 21-10 of the North Dakota Century Code, relating to the legacy and budget stabilization fund advisory board; to amend and reenact sections 21-10-04 and 21-10-06 of the North Dakota Century Code, relating to meetings of the state investment board and management of the legacy fund; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 21-10-04 of the North Dakota Century Code is amended and reenacted as follows:

##### **21-10-04. Board - Meetings.**

The state investment board shall select one of its members to serve as chair, one to serve as vice chair, and shall meet at the call of the chair, ~~investment director~~, or upon written notice signed by two members of the board.

**SECTION 2. AMENDMENT.** Section 21-10-06 of the North Dakota Century Code is amended and reenacted as follows:

##### **21-10-06. Funds under management of board - Accounts.**

~~The~~

1. Subject to the provisions of section 21-10-01, the board is charged with the investment of the following funds:
  1. a. State bonding fund.
  2. b. Teachers' fund for retirement.
  3. c. State fire and tornado fund.
  4. d. Workforce safety and insurance fund.
  5. e. National guard tuition trust fund.
  6. f. Public employees retirement system.
  7. g. Insurance regulatory trust fund.
  8. h. State risk management fund.
  9. i. Budget stabilization fund.
  10. j. Health care trust fund.



- 44- k. Cultural endowment fund.
- 42- l. Petroleum tank release compensation fund.
- m. Legacy fund.
2. Separate accounting must be maintained for each of the ~~above~~ funds listed in subsection 1. ~~When it is deemed advantageous, the~~The moneys of the individual funds may be commingled for investment purposes when determined advantageous.
3. The state investment board may provide investment services to, and manage the money of, any agency, institution, or political subdivision of the state, subject to agreement with the industrial commission. The scope of services to be provided by the state investment board to the agency, institution, or political subdivision must be specified in a written contract. The state investment board may charge a fee for providing investment services and any revenue collected must be deposited in the state retirement and investment fund.

**SECTION 3.** A new section to chapter 21-10 of the North Dakota Century Code is created and enacted as follows:

**Legacy and budget stabilization fund advisory board.**

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. The goal of investment for the legacy fund is principal preservation while maximizing total return. 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. The board shall report at least semiannually to the budget section. 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. The legislative council shall provide staff services to the legacy and budget stabilization fund advisory board. The staff and consultants of the state retirement and investment office shall advise the board in developing asset allocation and investment policies.

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

Approved April 26, 2011  
Filed April 26, 2011

# HEALTH AND SAFETY

## CHAPTER 180

### HOUSE BILL NO. 1266

(Representatives Porter, Weisz)  
(Senators J. Lee, Lyson)

AN ACT to create and enact a new section to chapter 23-01.2 of the North Dakota Century Code, relating to a state department of health emergency medical services and trauma medical director; and to provide an appropriation.

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

**SECTION 1.** A new section to chapter 23-01.2 of the North Dakota Century Code is created and enacted as follows:

**Medical director.**

The state health officer may appoint an emergency medical services and trauma medical director to provide medical oversight and consultation in the development and administration of the state emergency medical services and trauma systems. The medical director must be a physician licensed in the state and must be contracted and paid by the state department of health.

**SECTION 2. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the state department of health for the support of the comprehensive state trauma system, for the biennium beginning July 1, 2011, and ending June 30, 2013, as follows:

Advanced trauma life support training	\$20,000
Trauma designation site visits	\$30,000
Contracted emergency medical services and trauma medical director	\$50,000

Approved April 27, 2011  
Filed April 24, 2011

## CHAPTER 181

### HOUSE BILL NO. 1159

(Representatives Delmore, Hawken, N. Johnson, Weisz, S. Meyer)  
(Senator J. Lee)

AN ACT to amend and reenact section 23-01-05.2 of the North Dakota Century Code, relating to administration of epinephrine.

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

**SECTION 1. AMENDMENT.** Section 23-01-05.2 of the North Dakota Century Code is amended and reenacted as follows:

**23-01-05.2. ~~State health officer may authorize the administration~~ Administration of epinephrine - Liability.**

1. The state health officer ~~may~~shall adopt rules to authorize ~~laypersons~~layperson to administer epinephrine to ~~persons~~an individual who ~~have~~has a severe ~~adverse reactions to insect stings~~allergic reaction.
2. ~~A person~~An individual authorized to administer epinephrine by the state health officer may obtain premeasured doses of epinephrine and the necessary paraphernalia for ~~the~~epinephrine administration from any licensed physician or pharmacist.
3. ~~A person~~An individual authorized to administer epinephrine by the state health officer, and the employer of such an individual, is not civilly or criminally liable for any act or omission of that individual when acting in good faith while rendering emergency treatment to ~~persons~~an individual who ~~have~~has a severe adverse ~~reactions to insect stings~~reaction, except when the conduct amounts to gross negligence.

Approved April 4, 2011  
Filed April 4, 2011

## CHAPTER 182

### SENATE BILL NO. 2276

(Senators J. Lee, Dever, Heckaman)  
(Representatives Kaldor, Weisz)

AN ACT to create and enact a new section to chapter 23-01 of the North Dakota Century Code, relating to the North Dakota immunization program; to amend and reenact section 23-01-05.3 of the North Dakota Century Code, relating to reporting immunization data; and to provide an appropriation.

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

**SECTION 1. AMENDMENT.** Section 23-01-05.3 of the North Dakota Century Code is amended and reenacted as follows:

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

1. The state department of health may establish an immunization information system and may require the childhood immunizations specified in subsection 1 of section 23-07-17.1 and other information be reported to the department. The state department of health may only require the reporting of childhood immunizations and other data upon completion of the immunization information reporting system. A health care provider who administers a childhood immunization shall report the patient's identifying information, the immunization that is administered, and other required information to the department. The report must be submitted using electronic media, and must contain the data content and use the format and codes specified by the department.
2. If a health care provider fails to submit an immunization report required under this section within four weeks of vaccination:
  - a. That health care provider may not order or receive any vaccine from the North Dakota immunization program until that provider submits all reports required under this section.
  - b. The state department of health shall make a report to that health care provider's occupational licensing entity outlining that provider's failure to comply with the reporting requirements under this section.
3. Notwithstanding any other provision of law, a health care provider, elementary or secondary school, early childhood facility, public or private postsecondary educational institution, city or county board of health, district health unit, and the state health officer may exchange immunization data in any manner with one another. Immunization data that may be exchanged under this section is limited to the date and type of immunization administered to a patient and may be exchanged regardless of the date of the immunization.

**SECTION 2.** A new section to chapter 23-01 of the North Dakota Century Code is created and enacted as follows:

### **Immunization program - Provider choice - Purchasing.**

1. As used in this section:
  - a. "Department" means the state department of health.
  - b. "North Dakota immunization advisory committee" means the group of private health care providers, local public health units, department staff, and other applicable individuals which makes immunization and vaccine selection recommendations to the North Dakota immunization program.
  - c. "North Dakota immunization program" means the program administered by the department to provide vaccinations to North Dakota children consistent with state and federal law.
  - d. "Program-eligible child" means any child, who is under nineteen years of age, whose custodial parent or legal guardian resides in this state.
  - e. "Vaccine" means any vaccine recommended by the federal advisory committee on immunization practices of the centers for disease control and prevention.
  - f. "Vaccines for children program" is a federally funded program that provides vaccines at no cost to eligible children pursuant to section 1928 of the Social Security Act [42 U.S.C. 1396s].
2. As part of the North Dakota immunization program:
  - a. The department shall implement a provider choice system as part of the state's implementation of the vaccines for children program. This provider choice system must provide a health care provider participating in the state's vaccines for children program or in any other immunization program for children, adolescents, or adults which is administered through the state using federal or state funds, may select any licensed vaccine, including combination vaccines, and any dosage forms that have in effect a recommendation from the federal advisory committee on immunization practices. This subsection does not apply in the event of a disaster, public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency.
  - b. The department shall establish a program through which the department purchases vaccines through the federal vaccine purchasing contract.
    - (1) The department shall supply public health units with the purchased vaccines. A public health unit that receives vaccines under this subdivision shall administer the vaccines to program-eligible children.
    - (2) A public health unit that receives vaccines under this purchasing program may not bill an insurer for the cost of the vaccine but may charge an administration fee.
    - (3) The department shall fund this purchasing program through participation in the vaccines for children program, the federal section 317 vaccine program, and state funds appropriated for this purpose. If it appears there will be inadequate funds to fund this

purchasing program, the department shall petition the emergency commission for a transfer from the state contingency fund. The emergency commission may grant the transfer request, or so much thereof as may be necessary, to fund this purchasing program.

**SECTION 3. APPROPRIATION.** There is appropriated out of any moneys in the general 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 state department of health for the purpose of funding the program through which the department purchases vaccines through the federal vaccine purchasing contract, for the biennium beginning July 1, 2011, and ending June 30, 2013.

Approved May 17, 2011  
Filed May 17, 2011

## CHAPTER 183

### HOUSE BILL NO. 1422

(Representatives Weisz, Devlin, Kilichowski)  
(Senators Dever, Uglen, Heckaman)

AN ACT to create and enact a new section to chapter 23-01 of the North Dakota Century Code, relating to electronic drug prior authorization standards; 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 23-01 of the North Dakota Century Code is created and enacted as follows:

#### **Electronic drug prior authorization and transmission - Limitations.**

1. Effective August 1, 2013, a drug prior authorization request must be accessible to a health care provider with the provider's electronic prescribing software system and must be accepted electronically, through a secure electronic transmission, by the payer, by the insurance company, or by the pharmacy benefit manager responsible for implementing or adjudicating or for implementing and adjudicating the authorization or denial of the prior authorization request. For purposes of this section, a facsimile is not an electronic transmission.
2. Effective August 1, 2013, electronic transmission devices used to communicate a prescription to a pharmacist may not use any means or permit any other person to use any means, including advertising, commercial messaging, and popup advertisements, to influence or attempt to influence through economic incentives the prescribing decision of a prescribing practitioner at the point of care. Such means may not be triggered by or be in specific response to the input, selection, or act of a prescribing practitioner or the prescribing practitioner's staff in prescribing a certain pharmaceutical or directing a patient to a certain pharmacy. Any electronic communication sent to the prescriber, including advertising, commercial messaging, or popup advertisements must be consistent with the product label, supported by scientific evidence, and meet the federal food and drug administration requirements for advertising pharmaceutical products.
3. Electronic prescribing software may show information regarding a payer's formulary if the software is not designed to preclude or make more difficult the act of a prescribing practitioner or patient selecting any particular pharmacy or pharmaceutical.

**SECTION 2. ELECTRONIC DRUG PRIOR AUTHORIZATION STANDARDIZATION AND TRANSMISSION - REPORT TO LEGISLATIVE MANAGEMENT.** During the 2011-12 interim, the health information technology advisory committee shall establish an outline on how best to standardize drug prior authorization request transactions between providers and the payers, insurance companies, and pharmacy benefit managers responsible for adjudicating the authorization or denial of the prescription request. The outline must be designed with

the goal of maximizing administrative simplification and efficiency in preparation for electronic transmissions and alignment with standards that are or will potentially be used nationally. By June 30, 2012, the health information technology advisory committee shall provide a report to the legislative management regarding the outline on how best to standardize drug prior authorization request transactions.

Approved April 26, 2011  
Filed April 26, 2011



## CHAPTER 184

### SENATE BILL NO. 2293

(Senators O'Connell, Berry, Lyson)  
(Representatives Hunskor, Monson, Porter)

AN ACT to amend and reenact sections 23-02.1-19 and 23-02.1-20 of the North Dakota Century Code, relating to signature requirements for death certificates.

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

**SECTION 1. AMENDMENT.** Section 23-02.1-19 of the North Dakota Century Code is amended and reenacted as follows:

##### **23-02.1-19. Death registration.**

1. A death record for each death that occurs in this state must be filed with the state registrar in accordance with the rules and regulations set forth by the state department of health using the electronic death registration system. All registration and issuing of copies of death records will be completed by the state department of health.
2. The funeral director shall obtain the facts of death from the next of kin or the best qualified person or source available and must file the facts of death information using the electronic death registration system within three days after assuming custody of the dead body. The funeral director shall obtain the medical certification of death from the person responsible for the medical certification.
3. The medical certification must be completed and filed using the electronic death registration system within fifteen days after death by the physician, physician assistant, or nurse practitioner in charge of the patient's care for the illness or condition which resulted in death except when inquiry is required by the local health officer or coroner.
4. When death occurred without medical attendance or when inquiry is required by the local health officer or coroner, the county coroner shall investigate the cause of death, and shall obtain medical information about the individual from the individual's medical records or last-known physician or physician assistant, and shall complete and file the medical certification within fifteen days after taking charge of the case using the electronic death registration system.
5. If the cause of death cannot be determined within fifteen days after death, the medical certification may be filed after the prescribed period, in accordance with rules adopted by the state department of health. The attending physician, physician assistant, nurse practitioner, or coroner shall give the funeral director in custody of the body notice of the reason for the delay and final disposition may not be made until authorized by the attending physician, physician assistant, nurse practitioner, or coroner.
6. When a death is presumed to have occurred within this state but the body cannot be located, a death record may be prepared by the state registrar upon

receipt of findings of a court of competent jurisdiction, including the facts of death and medical certification required to complete the death record. The death record must be marked "presumptive" and must show on its face the date of registration and must identify the court and the date of the decree.

7. Each death record must include the social security number of the decedent, if the information is available. A social security number included on a death record is confidential and may be disclosed only to a relative or authorized representative of the individual named on the record or by an order of a court of competent jurisdiction.

**SECTION 2. AMENDMENT.** Section 23-02.1-20 of the North Dakota Century Code is amended and reenacted as follows:

**23-02.1-20. Fetal death registration.**

1. A fetal death record for each fetal death which occurs in this state after a gestation period of twenty completed weeks or more or of less than twenty completed weeks of gestation when provided by rules of the state department of health must be filed with the state registrar.
2. The funeral director who first assumes custody of a fetus shall file the fetal death record. In the absence of such a person, the physician or other person in attendance at or after delivery shall file the fetal death record. The person filing the fetal death record shall obtain the facts of death from the next of kin or the best qualified person or source available and must file the facts of death information within fifteen days of the occurrence using the electronic death registration system. The person filing the fetal death record shall obtain the medical certification of death from the person responsible for the medical certification.
3. The medical certification must be completed and filed using the electronic death registration system by the physician, physician assistant, or a nurse practitioner in attendance at the delivery within fifteen days after the delivery except when inquiry is required by the local health officer or coroner.
4. When inquiry is required by the local health officer or coroner or in the absence of medical attendance, the county coroner shall investigate the cause of fetal death, and shall obtain medical information about the individual from that individual's medical records or last-known physician or physician assistant and file the medical certification within fifteen days after taking charge of the case using the electronic death registration system.
5. If the cause of fetal death cannot be determined within fifteen days after death, the medical certification may be filed after the prescribed period of time in accordance with rules adopted by the state department of health. The attending physician, physician assistant, nurse practitioner, or coroner shall give the funeral director in custody of the fetus the notice of the reason for the delay and final disposition may not be made until authorized by the attending physician, physician assistant, nurse practitioner, or coroner.
6. The provision for entering the name of the father of the fetus on the fetal death record and the reporting of out-of-wedlock fetal deaths concur exactly with those set forth in section 23-02.1-13.

## CHAPTER 185

### HOUSE BILL NO. 1084

(Judiciary Committee)

(At the request of the State Department of Health)

AN ACT to amend and reenact sections 14-03-20.1 and 23-02.1-27 of the North Dakota Century Code, relating to surname options on marriage applications and disclosure of birth and death records; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 14-03-20.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **14-03-20.1. Surname options.**

1. Every person has the right to adopt any surname by which that person wishes to be known by using that surname consistently and without intent to defraud.
2. A person's surname does not automatically change upon marriage. Neither party to the marriage must change the party's surname. Parties to a marriage need not have the same surname.
3. One party or both parties to a marriage may elect to change the surname by which that party wishes to be known after the solemnization of the marriage by entering the new surname in the space provided on the marriage license application. The entry on the application must consist of one of the following surnames:
  - a. The surname of the other spouse;
  - b. Any former surname of either spouse;
  - c. A name combining into a single surname all or a segment of the premarriage surname or any former surname of either spouse; or
  - d. A combination name separated by a hyphen or space, provided that each part of the combination surname is the premarriage surname or former surname of either spouse.
4. Use of the option under subsection 3 has the effect of providing a record of the surname change. The marriage certificate containing the new surname, if any, constitutes proof that the use of the new surname, or the retention of the former surname, is lawful.
5. Neither the use of nor the failure to use the option of selecting a new surname by means of a marriage license application, as provided in subsection 3, abrogates the right of either party to adopt a different surname through usage at a future date.

6. Compliance with the surname provisions of this section is sufficient to meet the satisfactory evidence requirements of section 39-06-07.1.

<sup>74</sup> **SECTION 2. AMENDMENT.** Section 23-02.1-27 of the North Dakota Century Code is amended and reenacted as follows:

**23-02.1-27. Disclosure of records.**

Birth, death, and fetal death records, filings, data, or other information related to birth, death, and fetal death records are confidential and may not be disclosed except as authorized under this chapter. The state registrar shall restrict access to all vital records to protect vital records from loss, mutilation, or destruction and to prevent disclosure of the information contained in these records except as authorized under this chapter.

1. A certified copy of a birth record may be issued to the individual named on the record if that individual is at least sixteen years old, to a parent named on the record, to an authorized representative, or by the order of a court of competent jurisdiction. If the individual named on a birth record is deceased, a certified copy of that record may also be issued to a relative. If the date of birth on any birth record is more than one hundred years old, that record is an open record and a certified copy may be issued to anyone, except that adoption records remain confidential.
2. A certified copy of a complete death record may be issued to a relative, an authorized representative, the child fatality review board, ~~or a licensed physician for the purposes of researching family medical history,~~ a funeral director reporting the facts of death, or by the order of a court of competent jurisdiction and may include the cause of death and the social security number. A certified copy of ~~the facts of~~ a death record that includes the facts of death and the social security number may be issued to any person that may obtain a certified copy of a complete death record or to any licensed attorney who requires the copy for a bona fide legal determination. A certified ~~informational~~ copy of ~~an informational~~ death record may be issued to the general public, but the copy may not contain the cause of death or the social security number.
3. A certified copy of a fetal death record may be issued to a parent named on the record, an authorized representative, or by the order of a court of competent jurisdiction. A person authorized to receive a certified copy of a fetal death record may request the certified copy be issued in the form of a certification of birth resulting in stillbirth.
4. A noncertified informational copy of a marriage record may be issued to the general public.
5. Any individual authorized to receive a certified copy of any specific record may grant another individual the same authority by completing a written authorization on a form prescribed by the state department of health.
6. The state department of health may grant limited access to birth and death information to divisions and programs of the state department of health, the department of transportation, the protection and advocacy project, and to the

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<sup>74</sup> Section 23-02.1-27 was also amended by section 4 of House Bill No. 1214, chapter 127.

department of human services necessary for the purpose of completing ~~it~~their respective official duties.

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

Approved March 28, 2011

Filed March 28, 2011

## CHAPTER 186

### SENATE BILL NO. 2116

(Government and Veterans Affairs Committee)  
(At the request of the Adjutant General)

AN ACT to create and enact subsection 5 to section 23-06-03 of the North Dakota Century Code, relating to the designation of a person authorized to direct disposition of a decedent's remains in the event of death while in military service.

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

**SECTION 1.** Subsection 5 to section 23-06-03 of the North Dakota Century Code is created and enacted as follows:

5. 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 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.

Approved April 19, 2011  
Filed April 20, 2011

## CHAPTER 187

### SENATE BILL NO. 2084

(Human Services Committee)  
(At the request of the State Department of Health)

AN ACT to amend and reenact sections 23-07.1-01.1, 23-07.1-05, and 23-07.1-15 of the North Dakota Century Code, relating to orders for the treatment of individuals with tuberculosis; and to repeal sections 23-07.1-01, 23-07.1-06, 23-07.1-07, 23-07.1-08, 23-07.1-09, 23-07.1-10, 23-07.1-11, and 23-07.1-12 of the North Dakota Century Code, relating to orders for the treatment of individuals with tuberculosis.

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

**SECTION 1. AMENDMENT.** Section 23-07.1-01.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **23-07.1-01.1. Definitions.**

As used in this chapter:

1. "Appropriate facility" includes a licensed hospital, a public or private outpatient clinic, a long-term care facility, a correctional facility, or ~~a person's~~ an individual's home, and may also include directly observed therapy under the supervision of the department.
2. "Department" means the state department of health, including local public health ~~boards~~ units.
3. "Infectious tuberculosis" means tuberculosis disease in any part of the body, capable of producing infection or disease in others as demonstrated by laboratory evidence of tuberculosis bacteria in a specimen from any source in an individual's body or by radiographic or clinical findings.
4. "Medically approved course of treatment" means ongoing monitoring for a disease, treatment regimen, or therapy prescribed by a licensed physician and approved by the department.
5. "Noninfectious tuberculosis" or "latent TB infection" means the presence of tuberculosis bacteria in the body of an individual as evidenced by testing, such as significant reaction to a tuberculin skin test or a positive interferon gamma release assay, but without any other clinical findings of illness and without the capability of producing infection or disease in others.
6. "Substantial threat to the public health" means an individual with infectious or suspect tuberculosis who has not completed a medically approved course of therapy and does not adhere or threatens to not adhere to a recommended treatment regimen or does not adhere or threatens to not adhere to infection control measures.

7. "Suspect tuberculosis" means an illness marked by symptoms and laboratory tests that may be indicative of tuberculosis, such as a prolonged cough, prolonged fever, hemoptysis, compatible roentgenographic findings, or other appropriate medical imaging findings.
- 4-8. "Tuberculosis" includes these cases—~~infectious tuberculosis, suspect tuberculosis, noninfectious tuberculosis, and any other case~~ in which a ~~person~~ individual is found to have tuberculosis based upon laboratory testing, clinical evidence, or as diagnosed by a physician, the department, or a local health officer.

**SECTION 2. AMENDMENT.** Section 23-07.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.1-05. Reports - Orders for the custody of persons individuals.**

1. ~~Upon the receipt of a report to or receipt of information by the state health officer or any physician in the state that any person~~ individual is reasonably suspected to have or to have been exposed to tuberculosis, ~~a report must be made to the state health officer. Upon the receipt of the report,~~ the state health officer shall investigate the matter and if the state health officer is ~~convinced~~ determines that the ~~person~~ individual may have, or may have been exposed to, tuberculosis, the state health officer shall request the ~~person~~ individual to voluntarily seek appropriate evaluation and care and a medically approved course of treatment. If the ~~person~~ individual refuses to accept voluntary evaluation and care and a medically approved course of treatment, and the individual has infectious or suspect tuberculosis, the state health officer may issue ~~a temporary order for care and treatment as determined by the state health officer. If the state health officer's temporary order is ignored,~~ the state health officer may issue an order directing the sheriff or any peace officer of the county where the person alleged to have tuberculosis resides to compel the attendance of the person and may provide for suitable housing and care of the person until a hearing is held pursuant to section 23-07.1-08.

~~Prior to issuing a final order, the state health officer or a designee shall hear all relevant testimony for or against the final order. The examination and hearing on the order must be in the presence of the person alleged to have tuberculosis. The alleged tubercular person and any relative may resist the order and the parties may be represented by counsel.~~ order the individual or group of individuals into confinement under sections 23-07.6-02 and 23-07.6-03, and may order further isolation or quarantine as authorized under chapter 23-07.6. An order under this section may designate an appropriate facility for confinement, including the individual's home.

2. The state health officer may immediately investigate all reported or suspected cases of tuberculosis in the state and determine the sources of those infections.
3. The state health officer may conduct screening programs of populations that are at increased risk of developing tuberculosis or having latent tuberculosis infection and offer treatment as appropriate. Any such screening program may be implemented by a local health officer with the approval of the state health officer.

**SECTION 3. AMENDMENT.** Section 23-07.1-15 of the North Dakota Century Code is amended and reenacted as follows:



**23-07.1-15. Penalty.**

1. ~~A person~~An individual is guilty of a class A misdemeanor if:
  - a. That ~~person~~individual fails to undertake diagnostic examination for tuberculosis upon the request of the state health officer which is based upon the reasonable suspicion that ~~that person~~the individual has or has been exposed to tuberculosis;
  - b. That ~~person~~individual has been diagnosed with infectious or suspect tuberculosis and fails to undertake a medically approved course of treatment for tuberculosis; or
  - c. That ~~person~~individual is the parent of a minor or guardian of a ~~person~~an individual who violates subdivision a or b.
2. Upon conviction, the court may order that ~~person~~individual to obtain a supervised medically approved course of treatment for tuberculosis until the treatment is completed, in addition to other penalties or conditions provided by law.

**SECTION 4. REPEAL.** Sections 23-07.1-01, 23-07.1-06, 23-07.1-07, 23-07.1-08, 23-07.1-09, 23-07.1-10, 23-07.1-11, and 23-07.1-12 of the North Dakota Century Code are repealed.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 188

### HOUSE BILL NO. 1040

(Legislative Management)  
(Long-Term Care Committee)

AN ACT to amend and reenact subsection 1 of section 23-09.3-01.1 and subsection 1 of section 23-16-01.1 of the North Dakota Century Code, relating to the moratorium on expansion of basic care bed capacity and the moratorium on expansion of long-term care bed capacity; and to provide for a report to the legislative management.

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

<sup>75</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 23-09.3-01.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Basic care beds may not be added to the state's licensed bed capacity during the period between August 1, ~~2009~~2011, and July 31, ~~2014~~2013, except when:
  - a. A nursing facility converts nursing facility beds to basic care;
  - b. An entity demonstrates to the state department of health and the department of human services that basic care services are not readily available within a designated area of the state or that existing basic care beds within a fifty-mile [80.4672-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
  - c. If the state department of health and the department of human services grant approval of new basic care beds to an entity, the approved entity shall license the beds within forty-eight months from the date of approval.

<sup>76</sup> **SECTION 2. AMENDMENT.** Subsection 1 of section 23-16-01.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Notwithstanding sections 23-16-06 and 23-16-10, except when a facility reverts basic care beds to nursing facility beds, nursing facility beds may not be added to the state's licensed bed capacity during the period between August 1, ~~2009~~2011, and July 31, ~~2014~~2013. A nursing facility may not convert licensed nursing bed capacity to basic care bed capacity or convert basic care

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<sup>75</sup> Section 23-09.3-01.1 was also amended by section 1 of House Bill No. 1325, chapter 189.

<sup>76</sup> Section 23-16-01.1 was also amended by section 2 of House Bill No. 1325, chapter 189.

beds back to nursing facility beds more than one time in a twelve-month period if the beds have been licensed as basic care.

**SECTION 3. HEALTH CARE BED RECOMMENDATIONS - REPORT TO LEGISLATIVE MANAGEMENT.** During the 2011-12 interim, the state health council shall review current health care bed recommendations and determine if changes should be made to better serve the population of North Dakota. The state health council shall report its findings to the legislative management by July 1, 2012.

Approved April 19, 2011  
Filed April 19, 2011

## CHAPTER 189

### HOUSE BILL NO. 1325

(Representatives Kreidt, Bellew, Heller, Rohr)  
(Senator Dever)

AN ACT to amend and reenact subsection 1 of section 23-09.3-01.1 and section 23-16-01.1 of the North Dakota Century Code, relating to the moratorium on the expansion of basic care and long-term care bed capacity; and to provide an appropriation.

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

<sup>77</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 23-09.3-01.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Basic care beds may not be added to the state's licensed bed capacity during the period between August 1, ~~2009~~2011, and July 31, ~~2014~~2013, except when:
  - 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 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
  - e.d. ~~If the~~The state department of health and the department of human services grant approval of new basic care beds to an entity, ~~the~~The approved entity shall license the beds within forty-eight months from the date of approval.

<sup>78</sup> **SECTION 2. AMENDMENT.** Section 23-16-01.1 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>77</sup> Section 23-09.3-01.1 was also amended by section 1 of House Bill No. 1040, chapter 188.

<sup>78</sup> Section 23-16-01.1 was also amended by section 2 of House Bill No. 1040, chapter 188.

### 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, 20092011, and July 31, 20142013. 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 or convert, revert licensed basic care bedsbed capacity back to nursing facility bedsbed capacity, or otherwise reconfigure licensed nursing facility bed capacity more than one time in a twelve-month period ~~if the beds have been licensed as basic care.~~
2. ~~Transfers of beds~~Transfer of licensed nursing facility bed from onea 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 nursing facility bedsbed capacity must become licensed by an entity as the type of bed capacity originally transferred within forty-eight months of transfer. Nursing facility beds transferred before August 1, 2005, which are awaiting nursing facility licensure, may be converted to basic care licensure.~~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 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 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 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 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 holding period ceases to exist.

7. During the twenty-four-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 period originally established at the time of delicensure. 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 period originally established at the time of delicensure. The subsequent receiving entity must license the received bed capacity within the forty-eight-month period originally established at the time of delicensure.
  - 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.

**SECTION 3. APPROPRIATION.** There is appropriated out of any moneys in the health care trust fund in the state treasury, not otherwise appropriated, the sum of \$546,786, or so much of the sum as may be necessary, and from special funds derived from federal funds and other income, the sum of \$679,193, or so much of the sum as may be necessary, to the department of human services for the purpose of providing for payments for nursing facilities as provided for in sections 1 and 2 of this Act, for the biennium beginning July 1, 2011, and ending June 30, 2013.

Approved April 20, 2011  
Filed April 20, 2011

## CHAPTER 190

### HOUSE BILL NO. 1174

(Representatives Keiser, Ruby)  
(Senators Andrist, Klein)

AN ACT to amend and reenact sections 23-12-14 and 26.1-41-12 of the North Dakota Century Code, relating to copies of medical records and medical bills.

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

**SECTION 1. AMENDMENT.** Section 23-12-14 of the North Dakota Century Code is amended and reenacted as follows:

##### **23-12-14. Copies of medical records and medical bills.**

1. As used in this section, "health care provider" means a licensed individual or licensed facility providing health care services. Upon the request of a health care provider's patient or any person authorized by a patient, the provider shall provide a free copy of a patient's health care records to a health care provider designated by the patient or the person authorized by the patient if the records are requested for the purpose of transferring that patient's health care to another health care provider for the continuation of treatment.
2. Except as provided in subsection 1, upon the request for medical records or medical bills with the signed authorization of the patient, the health care provider shall provide medical records and any associated medical bills either in paper or facsimile format at a charge of no more than twenty dollars for the first twenty-five pages and seventy-five cents per page after twenty-five pages or in an electronic, digital, or other computerized format at a charge of thirty dollars for the first twenty-five pages and twenty-five cents per page after twenty-five pages. This charge includes any administration fee, retrieval fee, and postage expense.

**SECTION 2. AMENDMENT.** Section 26.1-41-12 of the North Dakota Century Code is amended and reenacted as follows:

##### **26.1-41-12. Discovery of facts about an injured person.**

1. Every employer or claimant, if a written request is made by a basic no-fault insurer against whom a claim has been made, shall furnish forthwith, in a form approved by the insurance commissioner, a sworn statement of the earnings, since the time of the accidental bodily injury and for a twelve-month period before the injury, of the individual upon whose injury the claim is based.
2. Every physician, coroner or medical officer, hospital, clinic, or other medical institution providing, before or after an accidental bodily injury upon which a claim for basic or optional excess no-fault benefits is based, any products, services, or accommodations in relation to the injury, or in relation to a condition claimed to be connected with the injury, if requested in writing to do so by the basic no-fault insurer against whom the claim has been made, shall:

- a. Promptly furnish a written report of the history, condition, treatment, and dates and costs of treatment.
  - b. Permit the inspection and copying of its records regarding the history, condition, treatment, and dates and costs of treatment.
  - c. Promptly furnish autopsy reports.
3. In the event of any dispute regarding a basic no-fault insurer's right to discovery of facts about an injured person's earnings or about history, condition, treatment, and dates and costs of such treatment, a court of record may enter an order for such discovery as justice requires.
  4. A person may not charge more than twenty dollars for the first twenty-five pages and seventy-five cents per page for every page beyond twenty-five pages for providing a copy of medical records ~~provided~~ or medical bills in paper or facsimile format to a basic no-fault insurer pursuant to this chapter. If providing an electronic, digital, or other computerized format, a person may charge thirty dollars for the first twenty-five pages and twenty-five cents per page after twenty-five pages for providing a copy of medical records or medical bills to a basic no-fault insurer pursuant to this chapter. This charge includes any administrative fee, retrieval fee, and postage expense.

Approved April 27, 2011  
Filed April 27, 2011



## CHAPTER 191

### HOUSE BILL NO. 1104

(Industry, Business and Labor Committee)  
(At the request of the State Department of Health)

AN ACT to amend and reenact subsection 7 of section 23-20.3-03.1 of the North Dakota Century Code, relating to financial assurance requirements for property subject to institutional controls or responsibility exemptions.

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

**SECTION 1. AMENDMENT.** Subsection 7 of section 23-20.3-03.1 of the North Dakota Century Code is amended and reenacted as follows:

7. Before agreeing to any institutional controls or responsibility exemptions, the department may require insurance coverage or other financial assurance for any additional environmental monitoring or remediation that may become necessary on the property after the site-specific responsibility exemptions and institutional controls are established, and must require such insurance coverage or other financial assurance when the projected cost of an active monitoring or remediation program exceeds five hundred thousand dollars. The department may terminate the requirement for financial assurance if the person required to have financial assurance demonstrates to the department that the property no longer presents a significant threat to public health or the environment. The department may enter a joint agreement with affected political subdivisions, state or federal agencies, property owners, lenders, the administrator of the petroleum tank release compensation fund, or any responsible or potentially responsible party concerning payment for or funding of any insurance coverage or other financial assurance for any additional environmental monitoring or remediation that may become necessary on contaminated or affected properties. Such agreements do not waive the liability limitations that apply by law to the state, to state agencies, or to political subdivisions, except up to the amounts, and subject to the terms, conditions, and limitations, of any insurance policy or any financial assurance fund created by the joint agreement of the parties under this subsection. Any financial assurance fund must comply with chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 and be managed for the benefit of the affected persons or community, but liability of the fund may not exceed the amount deposited with the fund.

Approved March 28, 2011  
Filed March 28, 2011

## CHAPTER 192

### HOUSE BILL NO. 1188

(Representatives Porter, DeKrey, Maragos)  
(Senator Dever)

AN ACT to create and enact a new subdivision to subsection 2 of section 39-06.1-06 of the North Dakota Century Code, relating to fees for depositing rubbish on highways; to amend and reenact sections 20.1-01-25, 23-29-05.1, and 39-10-59 of the North Dakota Century Code, relating to littering on game refuges or recreation areas, open burning, and depositing rubbish on highways; to provide a penalty; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 20.1-01-25 of the North Dakota Century Code is amended and reenacted as follows:

##### **20.1-01-25. Deposit of refuse unlawful - Penalty.**

The deposit of litter, refuse, rubbish, bottles, cans, or other waste materials, on or in the vicinity of ~~any~~ game refuge, lake, river, public park, or recreation area is prohibited. ~~Police officers, sheriffs, deputies, and game and fish department personnel~~ All law enforcement officers of this state shall enforce this section. ~~Any~~ A person who willfully violates this section is guilty of an infraction for which a minimum fine of one hundred dollars must be imposed.

**SECTION 2. AMENDMENT.** Section 23-29-05.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **23-29-05.1. Littering and open burning prohibited - Penalty.**

1. ~~No~~ A person may not discard and abandon ~~any~~ litter, furniture, or major appliances upon public property or upon private property not owned by that person, unless the property is designated for the disposal of litter, furniture, or major appliances and that person is authorized to use the property for that purpose.
2. ~~No~~ A person may not engage in the open burning of solid waste, unless the burning is conducted in accordance with rules adopted by the department.
3. A person violating this section is guilty of an infraction for which a minimum fine of one hundred dollars must be imposed, except if the litter discarded and abandoned amounted to more than one cubic foot [0.0283 cubic meter] in volume or if the litter consisted of furniture or a major appliance, the offense is a class B misdemeanor.

<sup>79</sup> **SECTION 3.** 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 39-10-59, a fee of one hundred dollars.

**SECTION 4. AMENDMENT.** Section 39-10-59 of the North Dakota Century Code is amended and reenacted as follows:

**39-10-59. Garbage, glass, rubbish, and injurious materials on highway prohibited.**

1. An individual may not deposit upon any highway any glass bottle, glass, nails, tacks, wire, cans, rubbish, or any other litter. In addition, an individual may not deposit upon ~~any~~ highway any other substance likely to injure ~~any~~ person, animal, or vehicle.
2. An individual who deposits, or permits to be deposited, upon ~~any~~ highway ~~any~~ destructive or injurious material shall immediately remove or cause to be removed the ~~same~~material.
3. An individual removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from the vehicle.

**SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 25, 2011  
Filed April 25, 2011

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<sup>79</sup> Section 39-06.1-06 was also amended by section 3 of Senate Bill No. 2207, chapter 268, section 1 of House Bill No. 1195, chapter 279, and section 1 of Senate Bill No. 2157, chapter 280.

## CHAPTER 193

### SENATE BILL NO. 2347

(Senators Oehlke, Wardner, Robinson)  
(Representatives Keiser, Hofstad, S. Meyer)

AN ACT to create and enact a new subsection to section 23-37-17 of the North Dakota Century Code, relating to financial responsibility; and to amend and reenact subsection 1 of section 23-37-18 of the North Dakota Century Code, relating to the petroleum compensation fund.

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

**SECTION 1.** A new subsection to section 23-37-17 of the North Dakota Century Code is created and enacted as follows:

If a registration payment is not received within sixty days of July first by the commissioner, a late fee of twenty-five dollars per tank per month must be imposed on the tank owner or operator.

**SECTION 2. AMENDMENT.** Subsection 1 of section 23-37-18 of the North Dakota Century Code is amended and reenacted as follows:

1. The administrator shall reimburse an eligible owner or operator for ninety percent of the costs of corrective action, including the investigation, which are greater than five thousand dollars and less than one million dollars per occurrence and two million dollars in the aggregate. An eligible tank owner or operator may not be liable for more than twenty thousand dollars out-of-pocket expenses for any one release. A reimbursement may not be made unless the administrator determines that:
  - 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.

Approved April 27, 2011  
Filed April 27, 2011

## CHAPTER 194

### SENATE BILL NO. 2094

(Human Services Committee)  
(At the request of the State Department of Health)

AN ACT to amend and reenact section 23-40-02 of the North Dakota Century Code, relating to the deadline by which an emergency medical services operator must file its application for funding with the state department of health; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 23-40-02 of the North Dakota Century Code is amended and reenacted as follows:

#### **23-40-02. Application.**

~~Before November first of each year, the~~The licenseholder of an emergency medical services operation shall file a complete application with the state department of health on a form provided by the department. The application must include an affirmation of the operation's billing levels, documentation of the availability of local matching funds, and other information as may be required by the department.

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

Approved April 19, 2011  
Filed April 19, 2011

## CHAPTER 195

### HOUSE BILL NO. 1041

(Legislative Management)  
(Long-Term Care Committee)

AN ACT to create and enact a new chapter to title 23, subsection 13 to section 43-12.1-04, and section 43-12.1-16.1 of the North Dakota Century Code, relating to a nurse aide registry, individuals exempt from regulation by the state board of nursing, and supervision of nursing interventions; to amend and reenact subsection 9 of section 43-12.1-02 and sections 43-12.1-16 and 50-30-02 of the North Dakota Century Code, relating to definitions, individuals exempt from regulation by the state board of nursing, delegation of medication administration, and the health care trust fund; and to provide an appropriation.

#### 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:

##### Definitions.

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

1. "Certified nurse aide" means an individual who is registered on the nurse aide registry and who has either successfully completed the requirements for the department-approved training and competency evaluation program or has successfully completed the requirements of the department-approved competency evaluation program.
2. "Department" means the state department of health.
3. "Home health aide" means an individual who is registered on the nurse aide registry and who renders personal related service under the supervision of a registered professional nurse.
4. "Medication assistant" means an individual who is registered on the nurse aide registry and who has successfully completed the requirements of a department-approved medication assistant program for a specific employment setting. A medication assistant may be designated a medication assistant I or a medication assistant II.
5. "Nurse aide" means an individual who is registered on the nurse aide registry and who has successfully completed the competency requirements identified by the department to provide nursing or nursing-related services to an individual in a health care facility or other setting.
6. "Nurse aide registry" means a listing of individuals who the department has determined have successfully completed the requirements established by the department to be designated as certified nurse aide, home health aide, nurse aide, or medication assistant.

### **Nurse aide registry - Rules.**

1. The department shall establish and administer a nurse aide registry. The registry must include disciplinary findings, including findings of abuse, neglect, or misappropriation of property, and must include the eligibility of the individual to be employed.
2. The health council shall adopt rules to regulate and register an individual who receives compensation for engaging in the provision of nursing or nursing-related services to an individual in a health care facility or other setting. The rules do not apply to a licensed health care professional practicing within the scope of that profession, an unlicensed assistive person under chapter 43-12.1, or a volunteer in the course of providing services without pay. In developing the rules, the health council shall consult with the state board of nursing and other key stakeholders.
3. The rules required under subsection 2 must include the regulation of certified nurse aides, home health aides, medication assistants, and nurse aides. For each category of regulated individuals, the rules must address:
  - a. Nurse aide registry requirements:
  - b. Training and competency requirements:
  - c. Approval of training programs:
  - d. Initial registration and renewal of registration of individuals who have met training and competency requirements:
  - e. Reporting and investigation of complaints regarding individuals on the registry; and
  - f. A disciplinary process for a validated finding of abuse, neglect, or misappropriation of resident or client property and for other misconduct that has the potential to be harmful to a resident or client by an individual on the nurse aide registry.
4. The department shall collect registration fees of twenty-five dollars per individual under this chapter from the individual or the individual's employer.
5. Registration fees collected by the department must be deposited in the department's operating account.

**SECTION 2. AMENDMENT.** Subsection 9 of section 43-12.1-02 of the North Dakota Century Code is amended and reenacted as follows:

9. "Unlicensed assistive person" means an assistant to the nurse, other than an individual who is registered on the state department of health nurse aide registry, who regardless of title is authorized by the board to perform nursing interventions delegated and supervised by a nurse.

<sup>80</sup> **SECTION 3.** Subsection 13 to section 43-12.1-04 of the North Dakota Century Code is created and enacted as follows:

<sup>80</sup> Section 43-12.1-04 was also amended by section 3 of House Bill No. 1092, chapter 123, and section 4 of House Bill No. 1092, chapter 123.

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.

**SECTION 4. AMENDMENT.** Section 43-12.1-16 of the North Dakota Century Code is amended and reenacted as follows:

**43-12.1-16. Delegation of medication administration.**

A licensed nurse may delegate medication administration to a person exempt under ~~subsections~~subsections 9 and 13 of section 43-12.1-04.

**SECTION 5.** Section 43-12.1-16.1 of the North Dakota Century Code is created and enacted as follows:

**43-12.1-16.1. Supervision and delegation of nursing interventions.**

A nurse may supervise and delegate nursing interventions to an individual exempt under subsection 13 of section 43-12.1-04.

**SECTION 6. AMENDMENT.** Section 50-30-02 of the North Dakota Century Code is amended and reenacted as follows:

**50-30-02. North Dakota health care trust fund created - Uses - Continuing appropriation.**

1. There is created in the state treasury a special fund known as the North Dakota health care trust fund. The fund consists of revenue received from government nursing facilities for remittance to the fund under former section 50-24.4-30. The department shall administer the fund. The state investment board shall invest moneys in the fund in accordance with chapter 21-10, and the income earned must be deposited in the North Dakota health care trust fund. All moneys deposited in the North Dakota health care trust fund are available to the department for:
  - a. Transfer to the long-term care facility loan fund, as authorized by legislative appropriation, for making loans pursuant to the requirements of this chapter.
  - b. Payment, as authorized by legislative appropriation, of costs of other programs authorized by the legislative assembly.
  - c. Repayment of federal funds, which are appropriated and may be spent if the United States department of health and human services determines that funds were inappropriately claimed under former section 50-24.4-30.
  - d. Operation and maintenance of the nurse aide registry.
2. The department shall continue to access the intergovernmental transfer program if permitted by the federal government and if use of the program is found to be beneficial.
3. Moneys in the fund may not be included in draft appropriation acts under section 54-44.1-06, except for the operation and maintenance of the nurse aide registry as provided for in this section.



**SECTION 7. APPROPRIATION.** There is appropriated out of any moneys in the state department of health operating fund in the state treasury, not otherwise appropriated, the sum of \$130,000, or so much of the sum as may be necessary, to the state department of health for the purpose of maintaining a nurse aide registry, for the biennium beginning July 1, 2011, and ending June 30, 2013. This appropriation includes funding for an additional one and one-half full-time equivalent positions provided to the state department of health to maintain the nurse aide registry.

**SECTION 8. APPROPRIATION.** There is appropriated out of any moneys in the health care trust fund in the state treasury, not otherwise appropriated, the sum of \$155,000, or so much of the sum as may be necessary, to the state department of health for the purpose of one-time costs to establish a nurse aide registry, for the biennium beginning July 1, 2011, and ending June 30, 2013.

Approved April 28, 2011  
Filed April 28, 2011

## CHAPTER 196

### SENATE BILL NO. 2215

(Senators Sitte, Berry, Kilzer)  
(Representatives Delmore, Devlin, Rohr)

AN ACT to provide for umbilical cord blood donation information.

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

##### SECTION 1.

###### Umbilical cord blood - Patient information - Definition.

1. If a health care professional is providing prenatal care to a patient, the health care professional may inform the patient of the following options relating to stem cells that are contained in the umbilical cord blood after the delivery of her child:
  - a. Discard the stem cells.
  - b. Donate the stem cells to a public umbilical cord blood bank.
  - c. Store the stem cells in a family umbilical cord blood bank for use by the immediate and extended family members.
  - d. Store the stem cells for family use through a family or sibling donor banking program that provides free collection, processing, and storage where there is a medical need.
2. The method a health care professional uses to provide the information under subsection 1 may include verbally or in writing or by providing the patient with a publication prepared by the state department of health under section 2 of this Act.
3. This section does not impose an obligation on a health care professional to inform a pregnant patient regarding the option of umbilical cord blood collection.
4. A health care professional who acts in good faith under this section is not subject to civil or criminal liability or professional discipline for those acts.
5. For purposes of this section, "umbilical cord blood" means the blood that remains in the umbilical cord and placenta after the birth of a newborn child.

##### SECTION 2.

###### Umbilical cord blood - Information pamphlet - Distribution.

1. By January 1, 2012, the state department of health shall prepare a pamphlet that includes information regarding the following:

- a. The medical processes involved in the collection of umbilical cord blood.
  - b. The medical risks of umbilical cord blood collection to the mother and her newborn child.
  - c. The current and potential future medical uses, risks, and benefits of umbilical cord blood collection to a mother, her newborn child, and the mother's biological family.
  - d. The current and potential future medical uses, risks, and benefits of umbilical cord blood collection to individuals who are not biologically related to a mother or her newborn child.
  - e. Any costs that may be incurred by a patient who chooses to make an umbilical cord blood donation.
  - f. Options for ownership and future use of the donated material.
  - g. The average cost of public and private umbilical cord blood banking.
2. As necessary, the department shall update the pamphlet prepared under this section.
  3. The department shall make the pamphlet available on the department's website and upon request, the department shall distribute the pamphlet at no charge.
  4. A hospital that treats a patient during the delivery of her child shall permit her to arrange for an umbilical cord blood donation as provided under section 23-16-15.
  5. For purposes of this section, "umbilical cord blood" means the blood that remains in the umbilical cord and placenta after the birth of a newborn child.

Approved April 26, 2011  
Filed April 26, 2011

## CHAPTER 197

### HOUSE BILL NO. 1044

(Legislative Management)  
(Public Safety and Transportation Committee)

AN ACT to create and enact a new chapter to title 23 of the North Dakota Century Code, relating to ambulance operations areas, an emergency medical services advisory council, emergency medical services funding areas, and state financial assistance for emergency medical services; to amend and reenact subsection 1 of section 23-27-01 of the North Dakota Century Code, relating to emergency medical services operations service areas; to repeal chapter 23-40 of the North Dakota Century Code, relating to emergency medical services allocations; to provide a statement of legislative intent; to provide an appropriation; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 23-27-01 of the North Dakota Century Code is amended and reenacted as follows:

1. The state department of health shall license emergency medical services operations. ~~After June 30, 2001, the~~ and may designate their service areas. The department shall limit the issuance of a license for any new emergency medical services operation based on the needs of the service area ~~if the applicant for the new license was licensed before July 1, 2001, and was subsequently relicensed under section 23-27-04.5.~~ A license for an emergency medical services operation is nontransferable.

**SECTION 2.** A new chapter to title 23 of the North Dakota Century Code is created and enacted as follows:

#### **Definitions.**

For purposes of this chapter:

1. "Emergency medical services funding area" means a geographic area eligible for state assistance and includes one or more licensed ambulance operations.
2. "Minimum reasonable cost" means the cost of operating one transporting ambulance service or the sum of the cost to operate one transporting ambulance service and any combination of one substation and one quick response unit.
3. "Required local matching funds" means revenue generated by the provision of emergency medical services, local mill levies, local sales tax, local donations, and in-kind donations of services.

#### **Emergency medical services advisory council.**

The state department of health shall establish an emergency medical services advisory council. The council must include at least three representatives appointed by

an emergency medical services organization, one individual to represent basic life support and one individual to represent advanced life support, both appointed by the state health officer, and other members designated by the state health officer, not to exceed a total of fourteen members. The department shall consider the recommendations of the council on the plan for integrated emergency medical services in the state, development of emergency medical services funding areas, development of the emergency medical services funding areas application process and budget criteria, and other issues relating to emergency medical services as determined by the state health officer. Council members are entitled to reimbursement for expenses in the manner provided in section 44-08-04. The department shall establish by policy the length of terms and the method for rotation of membership.

### **Emergency medical services funding areas.**

The state department of health shall establish and update biennially a plan for integrated emergency medical services in this state. The plan must identify ambulance operations areas, emergency medical services funding areas that require state financial assistance to operate a minimally reasonable level of emergency medical services, and a minimum reasonable cost for an emergency medical services operation. The department shall designate emergency medical services funding areas based on criteria adopted by the health council and published in the North Dakota Administrative Code.

### **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 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.

### **State financial assistance for emergency medical services - Distribution limit.**

During the first year of the biennium, the state department of health may not distribute more than one million two hundred fifty thousand dollars of the biennial legislative appropriation for state financial assistance for emergency medical services.

**SECTION 3. REPEAL.** Chapter 23-40 of the North Dakota Century Code is repealed.

**SECTION 4. STATEMENT OF LEGISLATIVE INTENT.** The \$3,000,000 appropriation in section 5 of this Act is in addition to the \$1,250,000 appropriation in 2011 House Bill No. 1004. The combined appropriations must be used as the base level for the purpose of budgeting for the 2013-15 executive budget.

**SECTION 5. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$3,000,000, or so much of the sum as may be necessary, to the state department of health, for the purpose of providing state assistance grants to emergency medical services operations and related administrative costs, for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 6. EFFECTIVE DATE.** Section 3 of this Act becomes effective on June 30, 2012.

Approved April 28, 2011  
Filed April 28, 2011

# HIGHWAYS, BRIDGES, AND FERRIES

## CHAPTER 198

### SENATE BILL NO. 2175

(Senators G. Lee, Oehlke, Triplett)  
(Representatives Ruby, Weisz, Delmore)

AN ACT to amend and reenact section 24-02-07.3 of the North Dakota Century Code, relating to prequalification and selection of consultants by the department of transportation.

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

**SECTION 1. AMENDMENT.** Section 24-02-07.3 of the North Dakota Century Code is amended and reenacted as follows:

#### **24-02-07.3. Prequalification, selection, and contracting for consultants - Solicitations.**

1. The director may prequalify, select, and contract for consultants in the area of engineering, land surveying, architecture, traffic safety, business administration, and related matters. The prequalification of the consultant must be based on detailed information regarding firm organization, qualifications of personnel, type of work the firm is qualified to perform, previous work experience, and financial status and must be provided to the director in a form approved by the director. If a consultant meets the criteria set by the director, the director shall prequalify the consultant, noting any limitations as to the type or amount of the work the consultant may perform. When a consultant is prequalified, the consultant is entitled to receive requests for proposals, proposals, and other solicitations for work in the areas in which the consultant is prequalified without any other screening or qualification process. The period of prequalification may not exceed three years. The qualifications of the consultant for a specific project must be determined according to the criteria in subsection 5 of section 54-44.7-03. The director shall publish a prequalification solicitation at least once each year and need not comply with the provision in subdivision c of subsection 2 of section 54-44.7-03 requiring the publication of an invitation for a specific project. The selection and contract negotiation must be performed according to subsections 6 and 7 of section 54-44.7-03.
2. The director is not required to comply with subsection 3 of section 54-44.7-03 or 54-44.7-04 and may procure the services of consultants for:
  - a. Projects with consultant costs estimated to be not more than ~~twenty-five~~one hundred thousand dollars through direct negotiation with a selected prequalified firm, after considering the nature of the project; the proximity of the architect, engineer, construction management, or land surveying services to the project; the capability of the architect, engineer,

construction manager, or land surveyor to produce the required services within a reasonable time; past performance; and the ability to meet project budget requirements. Fees paid pursuant to this subdivision during the twelve months immediately preceding negotiation of the contract by the department of transportation for professional services performed by any one architectural, engineering, or land surveying individual or firm may not exceed ~~forty~~fiftytwo hundred thousand dollars. A person seeking to render professional services under this section shall furnish the department a list of professional services previously provided to the department, including the fees paid during the twelve months immediately preceding the contract being negotiated. If the department determines that it is appropriate, the department may use the procurement procedures in subdivision b or c in place of the procedures in this subdivision.

- b. Projects with consultant costs estimated to be greater than ~~twenty five~~one hundred thousand dollars but not more than ~~one~~three hundred thousand dollars by notifying all prequalified firms in the specific area of need, allowing a minimum of seven calendar days to respond, and following the remaining process in subsections 4 through 7 of section 54-44.7-03. If the department determines that it is appropriate, the department may use the procurement procedures in subdivision c in place of the procedures in this subdivision.
  - c. Projects with consultant costs estimated to be greater than ~~one~~three hundred thousand dollars by notifying all prequalified firms, allowing a minimum of twenty-one calendar days to respond, and following the remaining process in subsections 4 through 7 of section 54-44.7-03.
3. Notwithstanding any other provision of law, when soliciting the services of consultants under this section, the director may include multiple projects in one solicitation. The requirements for the project within the highest dollar threshold under subsection 2 apply to all of the projects in the multiple project solicitation.

Approved April 25, 2011  
Filed April 25, 2011



## CHAPTER 199

### SENATE BILL NO. 2156

(Senators G. Lee, Nodland, Mathern)  
(Representatives R. Kelsch, Onstad, Vigesaas)

AN ACT to amend and reenact sections 24-02-26 and 24-02-27 of the North Dakota Century Code, relating to arbitration on construction claims.

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

**SECTION 1. AMENDMENT.** Section 24-02-26 of the North Dakota Century Code is amended and reenacted as follows:

##### **24-02-26. Controversies to be arbitrated - Arbitrators - How named.**

~~All controversies~~A controversy arising out of ~~any~~ a contract for the construction or repair of ~~highways~~ a highway entered into by the director must be submitted to arbitration as ~~provided in~~ provided under this chapter and chapter 32-29.2. ~~Any~~ person ~~who~~ that voluntarily enters into a contract for the construction or repair of ~~highways~~ highways ~~must be considered as having a highway~~ is deemed to have agreed to arbitration of ~~all controversies~~ a controversy arising out of that contract. For a claim for less than ~~fifty one hundred~~ thousand dollars, only one arbitrator may be jointly selected by the parties. For a claim for ~~fifty one hundred~~ thousand dollars or more, three persons comprise the arbitration board.

**SECTION 2. AMENDMENT.** Section 24-02-27 of the North Dakota Century Code is amended and reenacted as follows:

##### **24-02-27. Arbitration demand - District court may appoint arbitrators if parties fail.**

1. Unless a party submits the dispute to the American arbitration association, the arbitrators must be selected in accordance with this section. The party desiring arbitration of claims for more than ~~fifty one hundred~~ thousand dollars shall serve a written demand upon the adverse party. The demand must designate an arbitrator and must describe and detail all claim items that are submitted to arbitration. The party served with the demand shall respond in writing within thirty days, and the response must designate a second arbitrator and must explain the respondent's position concerning each claim item. If the respondent does not designate the second arbitrator within thirty days, the claimant may apply to the district court of the judicial district in which the project, or any part of the project, is located for the appointment of the second arbitrator. If the two arbitrators do not designate the third arbitrator within thirty days after the second arbitrator is designated, either party may apply to the district court for the appointment of the third arbitrator. The proceedings in the district court are governed by the rules of civil procedure concerning motions.
2. ~~The parties shall follow the same procedure~~ applies to the parties for claims involving less than ~~fifty one hundred~~ thousand dollars, except that the parties ~~shall~~ jointly shall select the arbitrator after the demand and response.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 200

### HOUSE BILL NO. 1185

(Representatives Vigesaa, Steiner, Kilichowski)  
(Senators Wardner, Laffen)

AN ACT to create and enact a new section to chapter 24-05 of the North Dakota Century Code, relating to advertisement of road construction contracts; and to amend and reenact section 24-05-04 of the North Dakota Century Code, relating to advertising contracts for road construction and equipment.

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

**SECTION 1.** A new section to chapter 24-05 of the North Dakota Century Code is created and enacted as follows:

##### **Contracts to be advertised - Road construction.**

A contract for highway improvement that exceeds one hundred thousand dollars must be advertised as provided by sections 11-11-26 and 11-11-27. For any contract for highway improvement which exceeds fifty thousand dollars but does not exceed one hundred thousand dollars, the county, when possible, shall seek quotes from at least two contractors.

**SECTION 2. AMENDMENT.** Section 24-05-04 of the North Dakota Century Code is amended and reenacted as follows:

##### **24-05-04. Contracts to be advertised - Requirements for rental contracts.**

Any purchase of county road machinery and any rental contract or agreement for the use of road machinery and other articles ~~or any contract for highway improvement~~, except necessary repairs for road machinery, which exceeds the sum of fifty thousand dollars must be advertised as provided by law for the purchase of county supplies. The board of county commissioners may not enter into a rental contract or agreement for the use of road machinery and other articles for a longer period than twelve months from the date of 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, which 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, and any payments made under the rental contract are recoverable from the county commissioners making the contract, jointly and severally. Notwithstanding the provisions of this section relating to the duration of rental contracts, the board of county commissioners may enter into lease-purchase agreements under which the annual payments by the county do not exceed twenty thousand dollars for the road machinery and articles covered by this section, if those agreements provide for the complete performance and full payment of the purchase price of the machinery or articles within five years from the date of the execution of the lease-purchase agreement according to section 44-08-01.1.

Approved April 8, 2011  
Filed April 11, 2011

## CHAPTER 201

### HOUSE BILL NO. 1232

(Representatives Monson, Headland, Kilichowski)  
(Senators Miller, Olafson, Dotzenrod)

AN ACT to amend and reenact sections 24-06-28 and 24-06-29 of the North Dakota Century Code, relating to obstructions and traffic safety hazards on section line roads.

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

**SECTION 1. AMENDMENT.** Section 24-06-28 of the North Dakota Century Code is amended and reenacted as follows:

**24-06-28. Obstruction of section lines prohibited - Exception - Certain fences not considered obstructions - Obstructions and traffic safety hazards - Penalty.**

1. A person may not place or cause to be placed any permanent obstruction, ~~stone, tree or portion of a tree, or rubbish~~ within the vertical plane of thirty-three feet [10.06 meters] of any section line or within the right of way of any highway, unless written permission is first secured from the board of county commissioners or the board of township supervisors, as ~~the case may be~~ appropriate. The permission must be granted where the section line has been closed pursuant to section 24-07-03 or where the topography of the land along the section line is such that in the opinion of the board of county commissioners or board of township supervisors, as the case may be, the construction of a road on the section line is impracticable.
2. A person may not place or cause to be placed any obstruction or traffic safety hazard within the vertical plane of thirty-three feet [10.06 meters] of any section line or within the right of way of any highway, unless written permission is first secured from the board of county commissioners or board of township supervisors, as appropriate.
3. Subsection 1 may not be construed to prohibit construction of fences:
  - a. Along or across section lines which have been closed pursuant to section 24-07-03 or which have not been opened because construction of a road is impracticable due to the topography of the land along the section line, but such fences are subject to removal as provided in section 24-06-30.
  - b. Across section lines which have not been closed pursuant to section 24-07-03 if cattle guards are provided in accordance with chapter 24-10 where fences cross the section lines.
- ~~3.4.~~ The construction of fences pursuant to subsection ~~23~~ 23 may not be considered an obstruction of section lines and any person who damages any fence or who opens and fails to close any gate constructed under subsection ~~23~~ 23 is guilty of an infraction.

5. Subsection 2 does not apply to a railroad company performing maintenance and repair work of railroad track, crossings, or other railroad facilities.

**SECTION 2. AMENDMENT.** Section 24-06-29 of the North Dakota Century Code is amended and reenacted as follows:

**24-06-29. Removal of permanent obstructions when section lines opened - Removal of obstructions and traffic safety hazards - Cost.**

1. If a person places or causes to be placed a ~~stone, tree or portion of a tree, or rubbish~~permanent obstruction within the vertical plane of thirty-three feet [10.06 meters] of any section line or within the right of way of any highway, the board of county commissioners or board of township supervisors, as ~~the case may be~~appropriate, when a public highway is opened, shall notify the owners of adjacent property to remove the ~~stone, tree or portion of a tree, or rubbish~~permanent obstruction. Written notice by registered mail to the record owner of the adjacent property mailed to the owner's last-known address and to any other persons in possession of the property constitutes valid notice. If the owners fail to remove the ~~stone, tree or portion of a tree, or rubbish~~permanent obstruction within thirty days after the notice is mailed, the board of county commissioners or the board of township supervisors, as ~~the case may be~~appropriate, shall remove the ~~stone, tree or portion of a tree, or rubbish~~permanent obstruction. The cost of removal must be entered the same as taxes against the adjacent property and paid in the same manner as taxes.
2. If a person places or causes to be placed an obstruction or traffic safety hazard within the vertical plane of thirty-three feet [10.06 meters] of any section line or within the right of way of any highway road surface, the board of county commissioners or board of township supervisors, as appropriate, shall issue a written order to the person who caused the obstruction or traffic safety hazard to be placed there to remove the obstruction or traffic safety hazard. If the person notified fails to remove the obstruction or traffic safety hazard as soon as practical after the notice is received, the board of county commissioners or board of township supervisors, as appropriate, shall remove the obstruction or traffic safety hazard. The person responsible for placement of the obstruction or traffic safety hazard is responsible and may be billed for any costs incurred by the county or township for removal of the obstruction or traffic safety hazard.
3. Subsection 2 does not apply to railroad facilities.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 202

### SENATE BILL NO. 2066

(Political Subdivisions Committee)  
(At the request of the Department of Transportation)

AN ACT to create and enact a new subsection to section 24-17-02 and a new subsection to section 24-17-03 of the North Dakota Century Code, relating to political signs.

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

**SECTION 1.** A new subsection to section 24-17-02 of the North Dakota Century Code is created and enacted as follows:

"Political sign" means a temporary sign erected on private property, which includes signs which solicit votes or support for, or in opposition to, any candidate or any political party under whose designation any candidate is seeking nomination or election. Political signs may also contain messages concerning any public question on the ballot in an election held under the laws of the state. Political signs do not include signs which have been issued a legal billboard permit by a city, county, or the state of North Dakota.

**SECTION 2.** A new subsection to section 24-17-03 of the North Dakota Century Code is created and enacted as follows:

Political signs temporarily installed on private property, providing the signs do not include any form of commercial advertising.

Approved April 19, 2011

Filed April 20, 2011

# MENTAL AND PHYSICAL ILLNESS OR DISABILITY

## CHAPTER 203

### SENATE BILL NO. 2041

(Legislative Management)  
(Judicial Process Committee)

AN ACT to create and enact a new section to chapter 25-03.1 of the North Dakota Century Code, relating to involuntary commitment procedures and the use of telemedicine technology.

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

**SECTION 1.** A new section to chapter 25-03.1 of the North Dakota Century Code is created and enacted as follows:

#### **Use of telemedicine technology authorized.**

For purposes of court-ordered examinations conducted under this chapter, an expert examiner may use telemedicine technologies to assist the expert examiner in conducting those examinations.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 204

### SENATE BILL NO. 2040

(Legislative Management)  
(Judicial Process Committee)

AN ACT to amend and reenact subsection 2 of section 25-03.1-11 of the North Dakota Century Code, relating to evaluations in involuntary mental health commitments.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 25-03.1-11 of the North Dakota Century Code is amended and reenacted as follows:

2. For purposes of any examination conducted pursuant to this section:
  - a. An evaluation of a respondent's physical condition may be made only by a licensed physician or psychiatrist.
  - b. An evaluation of a respondent's mental status may be made only by a licensed physician, psychiatrist, or psychologist trained in a clinical program.
  - c. An evaluation of whether the respondent is chemically dependent may be made only by a licensed physician, psychiatrist, licensed addiction counselor, or licensed psychologist trained in a clinical program.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 205

### SENATE BILL NO. 2039

(Legislative Management)  
(Judicial Process Committee)

AN ACT to amend and reenact section 25-03.1-23 of the North Dakota Century Code, relating to those mental health professionals authorized to execute a certificate regarding a continuing treatment order; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 25-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

##### **25-03.1-23. Petition for continuing treatment orders.**

A petition for an order authorizing continuing treatment must contain a statement setting forth the reasons for the determination that the patient continues to be a person requiring treatment; a statement describing the treatment program provided to the patient and the results of that treatment; and a clinical estimate as to how long further treatment will be required. The petition must be accompanied by a certificate executed by a physician, psychiatrist, ~~or~~ psychologist, or licensed addiction counselor, any of whom is practicing within that individual's professional scope of practice.

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

Approved April 25, 2011  
Filed April 25, 2011



## CHAPTER 206

### SENATE BILL NO. 2166

(Senators Mathern, J. Lee)  
(Representatives Thoreson, Hogan, Wieland)

AN ACT to amend and reenact section 25-03.1-34.2 of the North Dakota Century Code, relating to detoxification services in interstate contracts for treatment of mental illness or chemical dependency.

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

**SECTION 1. 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.**

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 or for providing chemical dependency 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 or to provide chemical dependency detoxification services in North Dakota to residents of a bordering state. An individual who receives treatment for mental illness or chemical dependency or who receives chemical dependency 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, 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 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, reexaminations, and extension of commitment must continue to apply to these residents. In all other respects, residents of a bordering state placed in North Dakota facilities are subject to North Dakota laws. An agreement with a bordering state must specify that responsibility for payment for the cost of care of a resident of a bordering state remains with the bordering state of which that individual is a resident and the cost of care of a North Dakota resident remains with the state of North Dakota. This section applies to detoxification services regardless of whether the services are provided on a voluntary or involuntary basis.

Approved April 19, 2011  
Filed April 19, 2011

## CHAPTER 207

### SENATE BILL NO. 2142

(Senators J. Lee, Mathern, Berry)  
(Representatives Delmore, Hawken, Weisz)

AN ACT to amend and reenact sections 15.1-02-16, 15.1-18-05, and 15.1-18-06, subsection 4 of section 15.1-32-01, subsection 4 of section 20.1-03-04, subsection 11 of section 25-03.1-02, subsections 3, 4, and 8 of section 25-03.3-01, section 25-03.3-07, subsection 2 of section 25-03.3-08, subsection 2 of section 25-03.3-09, sections 25-03.3-10, 25-03.3-11, and 25-03.3-12, subsection 1 of section 25-03.3-18, sections 25-03.3-19, 25-16.1-02, 25-18-01, and 25-18-15, subsection 4 of section 26.1-36-22, subsection 1 of section 27-20-34, subsection 2 of section 50-06-05.3, subsection 1 of section 50-24.1-07, subsection 9 of section 50-25.1-02, subsection 7 of section 57-38-01, and sections 57-63-01, 57-63-02, 57-63-03, and 57-63-13 of the North Dakota Century Code, relating to changing mental retardation to intellectual disability and mentally retarded to individual with an intellectual disability; and to provide for reconciliation by the legislative council of these terms in statutory provisions.

#### 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 ~~are mentally retarded~~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. Certificate of completion for paraprofessionals.

**SECTION 2. AMENDMENT.** Section 15.1-18-05 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-18-05. Special education strategist credential.**

In addition to any other credential, the superintendent of public instruction shall implement a special education strategist credential, effective August 1, 2001. Any individual who obtains a special education strategist credential and meets all other teacher licensure requirements imposed by statute may provide special education services in the areas of ~~mental retardation~~ intellectual disabilities, emotional disturbance, and specific learning disabilities.

**SECTION 3. AMENDMENT.** Section 15.1-18-06 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-18-06. Provisional special education strategist credential.**

Beginning August 1, 2001, upon application the superintendent of public instruction shall issue a provisional special education strategist credential to any individual who is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board and who holds a credential applicable to the areas of ~~mental retardation~~ intellectual disabilities, emotional disturbance, or specific learning disabilities. The provisional credential must be made available to the individual for the lesser of three years or the period of time required by the individual to complete the requirements for a special education strategist credential.

<sup>81</sup> **SECTION 4. AMENDMENT.** Subsection 4 of section 15.1-32-01 of the North Dakota Century Code is amended and reenacted as follows:

4. a. "Student with a disability" means an individual who is at least three years of age but who has not reached the age of twenty-one before September first of the year in which the individual turns twenty-one and who requires special education and related services because of:

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<sup>81</sup> Section 15.1-32-01 was also amended by section 1 of House Bill No. 1073, chapter 150.

- (1) ~~Mental retardation~~An intellectual disability;
  - (2) A hearing impairment, including deafness;
  - (3) Deaf-blindness;
  - (4) A speech or language impairment;
  - (5) A visual impairment, including blindness;
  - (6) An emotional disturbance;
  - (7) An orthopedic impairment;
  - (8) Autism;
  - (9) A traumatic brain injury;
  - (10) Other health impairment; or
  - (11) A specific learning disability.
- b. "Student with a disability" includes a student age eighteen through twenty-one who is incarcerated in an adult correctional facility and who, in the last educational placement prior to incarceration, was identified as being a student with a disability and did not have an individualized education program or was identified as being a student with a disability and had an individualized education program.

**SECTION 5. AMENDMENT.** Subsection 4 of section 20.1-03-04 of the North Dakota Century Code is amended and reenacted as follows:

4. Developmental center at westwood park, Grafton patients, North Dakota youth correctional center students, school for the deaf students, North Dakota vision services - school for the blind students, state hospital patients, ~~community health and retardation service unit patients~~clients of regional human service centers under direct therapeutic care, and residents of facilities licensed by the state department of health and the department of human services may fish without a resident fishing license. Patients of these institutions must be identified. The department shall issue authority to each institution.

**SECTION 6. AMENDMENT.** Subsection 11 of section 25-03.1-02 of the North Dakota Century Code is amended and reenacted as follows:

11. "Mentally ill person" means an individual with an organic, mental, or emotional disorder which substantially impairs the capacity to use self-control, judgment, and discretion in the conduct of personal affairs and social relations. "Mentally ill person" does not include ~~a mentally retarded person~~an individual with an intellectual disability of significantly subaverage general intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior, although a person who is ~~mentally retarded~~intellectually disabled may also suffer from a mental illness. Chemical dependency does not per se constitute mental illness, although persons suffering from that condition may also be suffering from mental illness.

<sup>82</sup> **SECTION 7. AMENDMENT.** Subsections 3, 4, and 8 of section 25-03.3-01 of the North Dakota Century Code are amended and reenacted as follows:

3. "~~Mental retardation~~""Intellectual disability" means mental retardation as defined in the "Diagnostic and Statistical Manual of Mental Disorders", American psychiatric association, fourth edition (~~1994~~), text revision (2000).
4. "Qualified expert" means an individual who has an expertise in sexual offender evaluations and who is a psychiatrist or psychologist trained in a clinical program and licensed pursuant to this state's law or a psychologist approved for exemption by the North Dakota board of psychologist examiners. For purposes of evaluating an individual with ~~mental retardation~~an intellectual disability, the qualified expert must have specialized knowledge in sexual offender evaluations of individuals with ~~mental retardation~~an intellectual disability.
8. "Sexually dangerous individual" means an individual who is shown to have engaged in sexually predatory conduct and who has a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction that makes that individual likely to engage in further acts of sexually predatory conduct which constitute a danger to the physical or mental health or safety of others. It is a rebuttable presumption that sexually predatory conduct creates a danger to the physical or mental health or safety of the victim of the conduct. For these purposes, ~~mental retardation~~intellectual disability is not a sexual disorder, personality disorder, or other mental disorder or dysfunction.

**SECTION 8. AMENDMENT.** Section 25-03.3-07 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.3-07. Appointment of guardian ad litem.**

At any stage of a proceeding under this chapter, on application of any individual or on its own motion, the court may appoint a guardian ad litem for a minor or an individual with ~~mental retardation~~an intellectual disability who is a respondent or witness or otherwise involved in the proceeding, if the minor or an individual with ~~mental retardation~~an intellectual disability has no parent, guardian, or custodian appearing on ~~behalf of the minor~~behalf of the minor or the ~~mentally retarded individual's~~individual with an intellectual disability or the interests of those persons conflict with those of the minor or an individual with ~~mental retardation~~an intellectual disability. The department of human services shall pay the expense of the guardian ad litem fee as established by the court.

**SECTION 9. AMENDMENT.** Subsection 2 of section 25-03.3-08 of the North Dakota Century Code is amended and reenacted as follows:

2. If the state's attorney knows or believes the respondent named in the petition is an individual with ~~mental retardation~~an intellectual disability, the state's attorney shall notify the court in the petition and shall advise the court of the name of the legal guardian of the respondent or, if none is known, the court may appoint a guardian ad litem for the respondent. Before service of the notice required in section 25-03.3-10, the court shall appoint an attorney for the respondent. An individual with ~~mental retardation~~an intellectual disability

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<sup>82</sup> Section 25-03.3-01 was also amended by section 1 of House Bill No. 1464, chapter 208.

may be detained in a correctional facility before the probable cause hearing only when no other secure facility is accessible, and then only under close supervision.

**SECTION 10. AMENDMENT.** Subsection 2 of section 25-03.3-09 of the North Dakota Century Code is amended and reenacted as follows:

2. After consultation with counsel, the respondent may waive the right to counsel or the right to any hearing provided pursuant to this chapter by notifying the court in writing. The notification must clearly state the respondent's reasons for the waiver and the respondent's counsel shall separately certify that counsel has explained to the respondent the proceedings, the legal and factual issues, potential defenses, the burden of proof, and possible outcomes of the proceedings. No guardian, guardian ad litem, attorney, or other individual may waive the right to counsel on behalf of an individual with ~~mental retardation~~ an intellectual disability.

**SECTION 11. AMENDMENT.** Section 25-03.3-10 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.3-10. Notice.**

If a respondent is detained pursuant to section 25-03.3-08, the state's attorney shall provide the respondent, or the respondent's guardian, if appropriate, with a copy of the petition filed with the court. The state's attorney shall provide the respondent with written notice of the respondent's right to a preliminary hearing and a commitment hearing, if probable cause is found to exist; the right to counsel and that counsel will be appointed for the respondent, if the respondent is indigent; and the right to have an expert of the respondent's choosing conduct an evaluation and testify on the respondent's behalf or, if the respondent is indigent, that the court will appoint a qualified expert for the respondent. The notice must state the date, time, and place for the preliminary hearing. If notice is given to a respondent who the state's attorney knows or believes is an individual with ~~mental retardation~~ an intellectual disability, the state's attorney also shall give notice to the respondent's attorney, guardian, and guardian ad litem, if any.

**SECTION 12. AMENDMENT.** Section 25-03.3-11 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.3-11. Preliminary hearing - Probable cause.**

The respondent is entitled to a preliminary hearing within seventy-two hours of being taken into custody pursuant to an order of the court, excluding weekends and holidays, unless the respondent knowingly waives the preliminary hearing pursuant to section 25-03.3-09. The respondent has a right to be present, to testify, and to present and cross-examine witnesses at any preliminary hearing. The court may receive evidence that would otherwise be inadmissible at a commitment hearing. If the court determines after a preliminary hearing that there is probable cause to believe the respondent is a sexually dangerous individual, the court shall order that the respondent be transferred to an appropriate treatment facility for an evaluation as to whether the respondent has a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction that makes the respondent likely to engage in further acts of sexually predatory conduct. If the court determines that probable cause does not exist to believe that the respondent is a sexually dangerous individual, the court shall dismiss the petition. If the respondent waives the preliminary hearing, then the respondent must be

immediately transferred to an appropriate treatment facility for an evaluation as to whether the respondent has a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction that makes the respondent likely to engage in further acts of sexually predatory conduct. An individual with ~~mental retardation~~ an intellectual disability may be evaluated under this chapter at a facility only if that facility provides care and treatment to individuals with ~~mental retardation~~ an intellectual disability.

**SECTION 13. AMENDMENT.** Section 25-03.3-12 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.3-12. Sexually dangerous individual - Evaluation.**

The evaluation must be conducted by one or more experts chosen by the executive director. Whenever a respondent is subject to an evaluation pursuant to this chapter, the respondent may retain an expert to perform an evaluation or testify on the respondent's behalf. When the respondent is an adult with ~~mental retardation~~ an intellectual disability and a guardian or guardian ad litem has not been appointed for the respondent, the court shall appoint an expert to perform an evaluation on behalf of the respondent. In the case of a respondent who is indigent, the court shall appoint a qualified expert to perform an examination or participate in the commitment proceeding on the respondent's behalf. The department of human services shall compensate any qualified expert appointed by the court on behalf of an indigent respondent in a reasonable amount based on time and expenses. An expert retained on behalf of the respondent must have reasonable access to the respondent for the purpose of the examination and to all relevant medical, psychological, and court records and reports.

**SECTION 14. AMENDMENT.** Subsection 1 of section 25-03.3-18 of the North Dakota Century Code is amended and reenacted as follows:

1. Annually, the executive director shall provide the committed individual with written notice that the individual has a right to petition the court for discharge. The notice must explain to the committed person when the committed person has a right to a hearing on the petition. The notice must inform the committed person of the rights this chapter affords the committed person at a discharge hearing. The executive director shall forward a copy of the notice to the committing court. If the committed individual is ~~mentally retarded~~ an individual with an intellectual disability, the executive director shall also provide the written notice to the individual's attorney, guardian, and guardian ad litem, if any.

**SECTION 15. AMENDMENT.** Section 25-03.3-19 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.3-19. Appeal.**

The respondent has the right to an appeal from an order of commitment or an order denying a petition for discharge. Upon entry of an appealable order, the court shall notify the respondent of the right to appeal and the right to counsel. The notice of appeal must be filed within thirty days after entry of the order. The appeal must be limited to a review of the procedures, findings, and conclusions of the committing court. Pending a decision on appeal, the order appealed from remains in effect. If the respondent is a ~~mentally retarded~~ an individual with an intellectual disability, the court shall provide notice of the right to appeal to the respondent's attorney, the respondent's guardian, and guardian ad litem.



**SECTION 16. AMENDMENT.** Section 25-16.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**25-16.1-02. Conditions for appointment of receiver.**

When the department has revoked the license of a treatment or care center, or when the operator of a center has requested, the department may file a petition with the district court to place the center under the control of a receiver if necessary to protect the health or safety of clients at the center. The court may grant the petition upon a finding that the health or safety of the clients at the center would be seriously threatened if a condition existing at the time the petition was filed is permitted to continue. Such a finding may be based upon evidence concerning the physical plant, the program and services offered by the center, but not solely upon evidence that a center:

1. Has been denied a license to operate as a center, or has had a previously issued license revoked; or
2. Has been denied certification as an intermediate care facility for ~~the mentally retarded~~ individuals with intellectual disabilities, or has lost or had revoked such certification.

**SECTION 17. AMENDMENT.** Section 25-18-01 of the North Dakota Century Code is amended and reenacted as follows:

**25-18-01. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Department" means the department of human services.
2. "Treatment or care center" means an entity providing services to individuals with developmental disabilities and licensed by the department as an intermediate care facility for ~~the mentally retarded~~ individuals with intellectual disabilities as defined in section 1905(d) of the Social Security Act [42 U.S.C. § 1396d(d)]; group home; or a provider of day supports, supported living arrangement, extended services, or infant development services.

**SECTION 18. AMENDMENT.** Section 25-18-15 of the North Dakota Century Code is amended and reenacted as follows:

**25-18-15. Payment for services to medically fragile children.**

The department may consider the unique level of care, the additional cost required to provide services to medically fragile clients under twenty-one years of age, and the actual and reasonable cost of providing services to developmentally disabled individuals when reimbursing an intermediate care facility for ~~the mentally retarded~~ individuals with intellectual disabilities.

**SECTION 19. AMENDMENT.** Subsection 4 of section 26.1-36-22 of the North Dakota Century Code is amended and reenacted as follows:

4. A policy that provides that coverage for a dependent child of an employee or other member of the covered group terminates upon attainment of the limiting age for dependent children specified in the policy does not operate to terminate the coverage of a dependent child while the child is a full-time student and has not attained the age of twenty-six years or while the child is

and continues to be both incapable of self-sustaining employment by reason of ~~mental retardation~~ intellectual disability or physical ~~handicap~~ disability and chiefly dependent upon the employee or member for support and maintenance, provided proof of incapacity and dependency is furnished to the insurer by the employee or member within thirty-one days of the child's attainment of limiting age and subsequently as may be required by the insurer but not more frequently than annually after the two-year period following the child's attainment of the limiting age.

**SECTION 20. AMENDMENT.** Subsection 1 of section 27-20-34 of the North Dakota Century Code is amended and reenacted as follows:

1. After a petition has been filed alleging delinquency based on conduct which is designated a crime or public offense under the laws, including local ordinances or resolutions of this state, the court before hearing the petition on its merits shall transfer the offense for prosecution to the appropriate court having jurisdiction of the offense if:
  - a. The child is over sixteen or more years of age and requests the transfer;
  - b. The child was fourteen years of age or more at the time of the alleged conduct and the court determines that there is probable cause to believe the child committed the alleged delinquent act and the delinquent act involves the offense of murder or attempted murder; gross sexual imposition or the attempted gross sexual imposition of a victim by force or by threat of imminent death, serious bodily injury, or kidnapping; or the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance in violation of subdivision a or b of subsection 1 of section 19-03.1-23, except for the manufacture, delivery, or possession with intent to manufacture or deliver marijuana in an amount less than one pound [.45 kilogram]; or the gratuitous delivery of a controlled substance not a narcotic drug or methamphetamine which is a singular and isolated event involving an amount of controlled substance sufficient solely for a single personal use; or
  - c.
    - (1) The child was fourteen or more years of age at the time of the alleged conduct;
    - (2) A hearing on whether the transfer should be made is held in conformity with sections 27-20-24, 27-20-26, and 27-20-27;
    - (3) Notice in writing of the time, place, and purpose of the hearing is given to the child and the child's parents, guardian, or other custodian at least three days before the hearing; and
    - (4) The court finds that there are reasonable grounds to believe that:
      - (a) The child committed the delinquent act alleged;
      - (b) The child is not amenable to treatment or rehabilitation as a juvenile through available programs;
      - (c) The child is not treatable in an institution for ~~the mentally retarded~~ individuals who are intellectually disabled or who are mentally ill;

- (d) The interests of the community require that the child be placed under legal restraint or discipline; and
- (e) If the child is fourteen or fifteen years old, the child committed a delinquent act involving the infliction or threat of serious bodily harm.

**SECTION 21. AMENDMENT.** Subsection 2 of section 50-06-05.3 of the North Dakota Century Code is amended and reenacted as follows:

- 2. Regional human service centers shall provide human services to all eligible individuals and families to help them achieve or maintain social, emotional, and economic self-sufficiency; prevent, reduce, or eliminate dependency; prevent or remedy the neglect, abuse, or exploitation of children and of adults unable to protect their own interests; aid in the preservation, rehabilitation, and reuniting of families; prevent or reduce inappropriate institutional care by providing for care while institutionalized or providing for community-based or other forms of less restrictive care; secure referral or admission for institutional care; provide outpatient diagnostic and treatment services; provide information concerning guardianship to people interested in becoming or who are guardians; and provide rehabilitation services for patients ~~with~~ with mental or emotional disorders, ~~mental retardation or~~ intellectual disability, and other psychiatric conditions, particularly for those patients who have received prior treatment in an inpatient facility. Regional human service centers shall deliver services in the manner prescribed by the department.

<sup>83</sup> **SECTION 22. AMENDMENT.** Subsection 1 of section 50-24.1-07 of the North Dakota Century Code is amended and reenacted as follows:

- 1. On the death of any recipient of medical assistance who was a resident of a nursing facility, intermediate care facility for ~~the mentally retarded 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 determination that the recipient cannot reasonably be expected to be discharged from the medical institution, or the recipient's fifty-fifth birthday, as the case may be, must be allowed as a preferred claim against the decedent's estate after payment, in the following order, of:
  - a. Funeral expenses not in excess of three thousand dollars;
  - b. Expenses of the last illness, other than those incurred by medical assistance;
  - c. Expenses of administering the estate, including attorney's fees approved by the court;
  - d. Claims made under chapter 50-01;
  - e. Claims made under chapter 50-24.5;

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<sup>83</sup> Section 50-24.1-07 was also amended by section 1 of Senate Bill No. 2074, chapter 365.

- f. Claims made under chapter 50-06.3 and on behalf of the state hospital; and
- g. Claims made under subsection 4.

**SECTION 23. AMENDMENT.** Subsection 9 of section 50-25.1-02 of the North Dakota Century Code is amended and reenacted as follows:

9. "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 ~~mentally retarded~~ 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.

**SECTION 24. AMENDMENT.** Subsection 7 of section 57-38-01 of the North Dakota Century Code is amended and reenacted as follows:

7. "Mental disorder" means a substantial disorder of the person's emotional processes, thought, cognition, or memory. Mental disorder is distinguished from:
  - a. Conditions which are primarily those of drug abuse, alcoholism, or ~~mental retardation~~ intellectual disability, unless in addition to one or more of these conditions, the person has a mental disorder.
  - b. The declining mental abilities that accompany impending death.
  - c. Character and personality disorders characterized by lifelong and deeply ingrained antisocial behavior patterns, including sexual behaviors which are abnormal and prohibited by statute, unless the behavior results from a mental disorder.

**SECTION 25. AMENDMENT.** Section 57-63-01 of the North Dakota Century Code is amended and reenacted as follows:

**57-63-01. Definitions.**

As used in this chapter:

1. "Business" has the meaning provided in section 31-08.1-01.
2. "Commissioner" means the state tax commissioner.
3. "Facility" includes the operating entity of each intermediate care facility for ~~the mentally retarded~~ individuals with intellectual disabilities located in this state.
4. "Intermediate care facility for ~~the mentally retarded~~ individuals with intellectual disabilities" means a treatment or care center licensed under chapter 25-16 that provides services eligible for coverage as medical assistance under 42 U.S.C. 1396a(a)(31), and also means the developmental center at westwood park, Grafton.
5. "Licensed bed" means a bed licensed under chapter 25-16 or approved by the secretary of health and human services pursuant to 42 U.S.C. 1396i.

6. "Quarter" means one of four calendar quarters beginning January first, April first, July first, or October first.

**SECTION 26. AMENDMENT.** Section 57-63-02 of the North Dakota Century Code is amended and reenacted as follows:

**57-63-02. Imposition of assessment.**

An assessment must be imposed on each intermediate care facility for ~~the mentally retarded~~ individuals with intellectual disabilities licensed in this state. No waiver otherwise available under this code is applicable to this assessment.

**SECTION 27. AMENDMENT.** Section 57-63-03 of the North Dakota Century Code is amended and reenacted as follows:

**57-63-03. Basis of assessment.**

Every year beginning July first, each intermediate care facility for ~~the mentally retarded~~ individuals with intellectual disabilities must be assessed a quarterly rate per licensed bed as of the first day of each quarter. The quarterly rate may not exceed a rate calculated by the department of human services as an annual aggregate of gross revenues as of December thirty-first of the preceding year for all intermediate care facilities for ~~the mentally retarded~~ individuals with intellectual disabilities, multiplied by one and one-half percent, and divided by licensed beds as of December thirty-first of the preceding year.

**SECTION 28. AMENDMENT.** Section 57-63-13 of the North Dakota Century Code is amended and reenacted as follows:

**57-63-13. Provider assessment fund.**

There is a special fund in the state treasury known as the provider assessment fund. The fund includes all revenue received from intermediate care facilities for ~~the mentally retarded~~ individuals with intellectual disabilities for remittance to the fund under this chapter. All moneys designated for the fund from whatever source derived must be deposited with the state treasurer in the provider assessment fund.

**SECTION 29. LEGISLATIVE COUNCIL TO CHANGE TERMINOLOGY.** The legislative council shall replace "mentally retarded" or "mental retardation" or any derivatives of those terms, which when used in context indicate an intention to refer to those terms, wherever they appear in legislation enacted by the sixty-second legislative assembly of North Dakota and to insert in lieu of each deletion "intellectually disabled", "intellectual disability", or "individual with intellectual disabilities".

Approved April 19, 2011  
Filed April 19, 2011

## CHAPTER 208

### HOUSE BILL NO. 1464

(Representatives Streyle, Heilman, Holman)  
(Senators Laffen, Sitte, Nelson)

AN ACT to amend and reenact subsection 9 of section 25-03.3-01 and section 25-03.3-04 of the North Dakota Century Code, relating to retention of sexual offender case files and records and the definition of sexually predatory conduct.

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

<sup>84</sup> **SECTION 1. AMENDMENT.** Subsection 9 of section 25-03.3-01 of the North Dakota Century Code is amended and reenacted as follows:

9. "Sexually predatory conduct" means:
  - a. Engaging or attempting to engage in a sexual act or sexual contact with another individual, or causing or attempting to cause another individual to engage in a sexual act or sexual contact, if:
    - (1) The victim is compelled to submit by force or by threat of imminent death, serious bodily injury, or kidnapping directed toward the victim or any human being, or the victim is compelled to submit by any threat or coercion that would render ~~an individual of reasonable firmness~~ person reasonably incapable of resisting;
    - (2) The victim's power to appraise or control the victim's conduct has been substantially impaired by the administration or employment, without the victim's knowledge, of intoxicants or other means for purposes of preventing resistance;
    - (3) The actor knows or should have known that the victim is unaware that a sexual act is being committed upon the victim;
    - (4) The victim is less than fifteen years old;
    - (5) The actor knows or should have known that the victim has a disability that substantially impairs the victim's understanding of the nature of the sexual act or contact;
    - (6) The victim is in official custody or detained in a treatment facility, health care facility, correctional facility, or other institution and is under the supervisory authority, disciplinary control, or care of the actor; ~~or~~
    - (7) The victim is a minor and the actor is an adult; or

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<sup>84</sup> Section 25-03.3-01 was also amended by section 7 of Senate Bill No. 2142, chapter 207.

- (8) The other individual is a person related to the actor within a degree of consanguinity within which marriages are declared incestuous and void by section 14-03-03 and the actor knows that; or
- b. Engaging in or attempting to engage in sexual contact with another individual or causing or attempting to cause another individual to have sexual contact, if:
- (1) The actor knows or should have known that the contact is offensive to the victim; or
  - (2) The victim is a minor, fifteen years of age or older, and the actor is the minor's parent, guardian, or is otherwise responsible for general supervision of the victim's welfare.

**SECTION 2. 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 ~~section 12.1-20-03, 12.1-20-04, 12.1-20-05, 12.1-20-06, or 12.1-20-07~~ chapters 12.1-20 and 12.1-27.2 must be retained for fifty years and made available to any state's attorney for purposes of investigation or proceedings pursuant to this chapter.

Approved April 4, 2011  
Filed April 4, 2011

## CHAPTER 209

### SENATE BILL NO. 2265

(Senators Krebsbach, Burckhard, Mathern)  
(Representatives Bellew, Ruby, Thoreson)

AN ACT to create and enact two new sections to chapter 25-16.2 of the North Dakota Century Code, relating to a statement of purpose and work activity center contracts; and to amend and reenact sections 25-16.2-01 and 25-16.2-03, subsection 1 of section 54-44.4-05, and subdivision e of subsection 2 of section 54-44.4-05 of the North Dakota Century Code, relating to work activity centers and procurement of services by state agencies.

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

**SECTION 1.** A new section to chapter 25-16.2 of the North Dakota Century Code is created and enacted as follows:

**Purpose.**

It is in the public interest to advance employment opportunities to individuals with disabilities so that those individuals may acquire job skills and training and gain greater independence and quality of life. This state is committed to promoting self-sufficiency, integrating individuals with disabilities into our communities, and maximizing the earning potential of individuals with disabilities.

**SECTION 2. AMENDMENT.** Section 25-16.2-01 of the North Dakota Century Code is amended and reenacted as follows:

**25-16.2-01. Work activity center - Definition.**

As used in this chapter "work activity center" means a facility, licensed by the department of human services, which is located in the state and operated by a nonprofit corporation organized for the primary purpose of employing and providing rehabilitative activities for physically handicapped, developmentally disabled, and chronically mentally ill persons ~~physically handicapped, developmentally disabled, and chronically mentally ill persons~~ individuals with physical disabilities, developmental disabilities, or chronic mental illnesses.

**SECTION 3. AMENDMENT.** Section 25-16.2-03 of the North Dakota Century Code is amended and reenacted as follows:

**25-16.2-03. Contract requirement.**

Any contract awarded pursuant to this chapter must be in writing and must be made available by the purchasing party to any person upon request. The contract must include the purchase price, the quantity of ~~product~~ product, commodity or service purchased, and the time period for which the ~~product~~ product, commodity or service will be provided.

**SECTION 4.** A new section to chapter 25-16.2 of the North Dakota Century Code is created and enacted as follows:



**Direct purchase from work activity centers.**

If acceptable commodities or services are produced or provided by a work activity center at fair market price, any state entity or political subdivision may enter a contract to purchase directly from the work activity center without obtaining competition.

<sup>85</sup> **SECTION 5. AMENDMENT.** Subsection 1 of section 54-44.4-05 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided in ~~sections~~section 44-08-01 and ~~25-16.2-02, chapter 25-16.2,~~ and in this chapter, purchasing contracts must be awarded through a competitive bidding process to the lowest responsible bidder considering conformity with specifications, terms of delivery, and quality and serviceability, unless it is determined to be advantageous to the state to select a contractor through a competitive proposal process using other or additional criteria. The procurement officer may reject any or all bids or negotiate for a lower price with a successful bidder. Each bid received, with the name of the bidder, must be recorded. The office of management and budget may enter into term contracts for the acquisition of commodities or services and may make multiple awards for term commodity or service contracts when it deems a multiple award to be in the best interests of the state. All bids received under this chapter pursuant to a competitive sealed bid are exempt records under subsection 5 of section 44-04-17.1 until the date and time the bids are opened.

<sup>86</sup> **SECTION 6. AMENDMENT.** Subdivision e of subsection 2 of section 54-44.4-05 of the North Dakota Century Code is amended and reenacted as follows:

- e. Acceptable commodities or services are produced or provided by correctional institutions or other government agencies or a work activity center as defined in section 25-16.2-01.

Approved April 26, 2011  
Filed April 26, 2011

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<sup>85</sup> Section 54-44.4-05 was also amended by section 6 of Senate Bill No. 2265, chapter 209.

<sup>86</sup> Section 54-44.4-05 was also amended by section 5 of Senate Bill No. 2265, chapter 209.

## CHAPTER 210

### SENATE BILL NO. 2067

(Human Services Committee)  
(At the request of the State Department of Health)

AN ACT to amend and reenact section 23-01-03.1, subsection 3 of section 25-17-00.1, and sections 25-17-01, 25-17-03, and 25-17-04 of the North Dakota Century Code, relating to newborn disease screening and research regarding metabolic and genetic diseases.

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

**SECTION 1. AMENDMENT.** Section 23-01-03.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **23-01-03.1. Newborn metabolic and genetic disease screening tests.**

The health council may authorize the use of newborn metabolic and genetic disease screening tests, as provided for in chapter 25-17, for research purposes. The council shall adopt rules to ensure that the results are used for legitimate research purposes and to ensure that the confidentiality of the newborns and their families is protected.

**SECTION 2. AMENDMENT.** Subsection 3 of section 25-17-00.1 of the North Dakota Century Code is amended and reenacted as follows:

3. "Metabolic disease" ~~means~~ and "genetic disease" mean a disease as designated by rule of the state health council for which early identification and timely intervention will lead to a significant reduction in mortality, morbidity, and associated disabilities.

**SECTION 3. AMENDMENT.** Section 25-17-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **25-17-01. Newborn screening education programs and tests.**

The state department of health shall:

1. Develop and implement a metabolic and genetic disease educational program among physicians, hospital staffs, public health nurses, and the citizens of this state. This educational program must include information about the nature of the diseases and about screening for the early detection of these diseases so that proper measures may be taken to reduce mortality, morbidity, and associated disabilities.
2. Provide, on a statewide basis, a newborn screening system and short-term followup services for metabolic and genetic diseases.
3. Coordinate with or refer individuals to public and private health care service providers for long-term followup services for metabolic diseases or genetic diseases, or both.

**SECTION 4. AMENDMENT.** Section 25-17-03 of the North Dakota Century Code is amended and reenacted as follows:

**25-17-03. Treatment for positive diagnosis - Registry of cases.**

The state department of health shall:

1. Follow up with attending physicians cases with positive tests for metabolic diseases or genetic diseases, or both, in order to determine the exact diagnosis.
2. Refer every diagnosed case of a metabolic disease or genetic disease, or both, to a qualified health care provider for necessary treatment ~~of the metabolic disease.~~
3. Maintain a registry of cases of metabolic and genetic diseases.
4. Provide medical food at no cost to males under age twenty-two and females under age forty-five who are diagnosed with phenylketonuria or maple syrup urine disease, regardless of income. If treatment services under this subsection are provided to an individual by the department, the department may seek reimbursement from any government program that provides coverage to that individual for the treatment services provided by the department.
5. Offer for sale at cost medical food to females age forty-five and over and to males age twenty-two and over who are diagnosed with phenylketonuria or maple syrup urine disease, regardless of income. These individuals are responsible for payment to the department for the cost of medical food.
6. Provide low-protein modified food products, if medically necessary as determined by a qualified health care provider, to females under age forty-five and males under age twenty-two who are receiving medical assistance and are diagnosed with phenylketonuria or maple syrup urine disease.

**SECTION 5. AMENDMENT.** Section 25-17-04 of the North Dakota Century Code is amended and reenacted as follows:

**25-17-04. Testing and reporting requirements.**

The physician attending a newborn child, or the birth attendant in the case of an out-of-hospital birth, shall provide the parents with written information regarding the nature of the proposed testing and then cause that newborn child to be subjected to testing for metabolic and genetic diseases, in the manner prescribed by the state department of health. A physician attending a patient with a metabolic disease or genetic disease, or both, shall report the case to the state department of health. The testing requirements of this section do not apply if the parents of a newborn child object to the testing ~~on the grounds that testing for metabolic diseases conflicts with their religious tenets or practices.~~

Approved April 26, 2011  
Filed April 26, 2011

# INSURANCE

## CHAPTER 211

### HOUSE BILL NO. 1125

(Representative Keiser)  
(At the request of the Insurance Commissioner)

AN ACT to create and enact a new section to chapter 26.1-02 of the North Dakota Century Code, relating to compliance with federal law by health insurers; to provide for application; and to declare an emergency.

#### **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:

#### **Compliance with federal law.**

The commissioner shall administer and enforce the provisions of the Patient Protection and Affordable Care Act [Pub. L. 111-148] and the provisions of the Health Care and Education Reconciliation Act of 2010 [Pub. L. 111-152] to the extent that the provisions apply to insurance companies subject to the commissioner's jurisdiction and to the extent that the provisions are not under the exclusive jurisdiction of any federal agency.

**SECTION 2. APPLICATION.** In carrying out the requirements of section 1 of this Act, the insurance commissioner shall provide regular updates to the legislative management during the 2011-12 interim. The commissioner shall submit proposed legislation to the legislative management for consideration at a special legislative session if the commissioner is required by federal law to implement any program or requirement before January 1, 2013. For any program or requirement that must be implemented between January 1, 2013, and January 1, 2014, the commissioner shall submit proposed legislation to the legislative management before October 15, 2012.

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

Approved April 4, 2011  
Filed April 4, 2011

## CHAPTER 212

### HOUSE BILL NO. 1121

(Judiciary Committee)  
(At the request of the Insurance Commissioner)

AN ACT to create and enact subsection 3 to section 26.1-03-11.1 of the North Dakota Century Code, relating to the confidentiality of actuarial opinion support documents.

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

**SECTION 1.** Subsection 3 to section 26.1-03-11.1 of the North Dakota Century Code is created and enacted as follows:

3. a. Documents, materials, or other information in the possession or control of the commissioner which are an actuarial report, workpapers, or actuarial opinion summary provided in support of the actuarial certification commonly known as the statement of actuarial opinion, and any other material provided by the insurance company to the commissioner in connection with the actuarial report, workpapers, or actuarial opinion summary, is confidential and privileged and is not subject to section 44-04-18. This subsection may not be construed to limit the authority to subpoena or otherwise discover the documents, materials, or other information or to limit use of the documents, materials, or other information in criminal investigations or proceedings.
- b. This subsection may not be construed to limit the commissioner's authority to release the documents to the actuarial board for counseling and discipline so long as the material is required for the purpose of professional disciplinary proceedings and the actuarial board for counseling and discipline establishes procedures satisfactory to the commissioner for preserving the confidentiality of the documents. This section may not be construed to limit the commissioner's authority to use the documents, materials, or other information in furtherance of any regulatory or legal action brought as part of the commissioner's official duties.
- c. This subsection does not apply to actuarial opinions required under chapter 26.1-35.

Approved March 28, 2011  
Filed March 28, 2011

## CHAPTER 213

### HOUSE BILL NO. 1083

(Industry, Business and Labor Committee)  
(At the request of the Insurance Commissioner)

AN ACT to amend and reenact subsection 1 of section 26.1-03.1-03 and subsection 1 of section 26.1-03.2-03 of the North Dakota Century Code, relating to the risk-based capital reports of insurance companies.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 26.1-03.1-03 of the North Dakota Century Code is amended and reenacted as follows:

1. "Company action level event" means any of the following events:
  - a. The filing of a risk-based capital report by an insurer which indicates that:
    - (1) The insurer's total adjusted capital is greater than or equal to its regulatory action level risk-based capital but less than its company action level risk-based capital; ~~or~~
    - (2) If a life or health insurer, the insurer has total adjusted capital that is greater than or equal to its company action level risk-based capital but less than the product of its authorized control level risk-based capital and two and one-half and has a negative trend; or
    - (3) If a property and casualty insurer, the insurer has total adjusted capital which is greater than or equal to its company action level risk-based capital but less than the product of its authorized control level risk-based capital and three and triggers the trend test determined in accordance with the trend test calculation included in the property and casualty risk-based capital instructions;
  - b. The notification by the commissioner to the insurer of an adjusted risk-based capital report that indicates an event in subdivision a, provided the insurer does not challenge the adjusted risk-based capital report under section 26.1-03.1-07; or
  - c. If, under section 26.1-03.1-07, an insurer challenges an adjusted risk-based capital report that indicates the event in subdivision a, the notification by the commissioner to the insurer that the commissioner, after a hearing, has rejected the insurer's challenge.

**SECTION 2. AMENDMENT.** Subsection 1 of section 26.1-03.2-03 of the North Dakota Century Code is amended and reenacted as follows:

1. "Company action level event" means any of the following events:
  - a. The filing of a risk-based capital report by a health organization which indicates that ~~the~~;

- (1) The health organization's total adjusted capital is greater than or equal to its regulatory action level risk-based capital but less than its company action level risk-based capital; or
- (2) If a health organization has total adjusted capital that is greater than or equal to its company action level risk-based capital but less than the product of its authorized control level risk-based capital and three and triggers the trend test determined in accordance with the trend test calculation included in the health risk-based capital instructions;
- b. Notification by the commissioner to the health organization of an adjusted risk-based capital report that indicates an event in subdivision a, provided the health organization does not challenge the adjusted risk-based capital report under section 26.1-03.2-07; or
- c. If, pursuant to section 26.1-03.2-07, a health organization challenges an adjusted risk-based capital report that indicates the event in subdivision a, the notification by the commissioner to the health organization that the commissioner, after a hearing, has rejected the health organization's challenge.

Approved March 28, 2011  
Filed March 28, 2011

## CHAPTER 214

### SENATE BILL NO. 2237

(Senators Schneider, Dever, Larsen)  
(Representatives Keiser, L. Meier, S. Meyer)

AN ACT to amend and reenact subsection 7 of section 26.1-04-03 of the North Dakota Century Code, relating to prohibited practices in the insurance business.

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

<sup>87</sup> **SECTION 1. AMENDMENT.** Subsection 7 of section 26.1-04-03 of the North Dakota Century Code is amended and reenacted as follows:

7. Unfair discrimination.
  - a. Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.
  - b. Making or permitting any unfair discrimination, including consideration of an individual's history or status as a subject of domestic abuse, between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatsoever.
  - c. Refusing to insure, or refusing to continue to insure, or limiting the amount, extent, or kind of life insurance, accident and sickness insurance, health services, or health care protection insurance available to an individual, or charging an individual a different rate for the same coverage solely because of blindness or partial blindness. Refusal to insure includes denial by an insurer of disability insurance coverage on the grounds that the policy defines "disability" as being presumed in the event that the insured loses the insured's eyesight; however, an insurer may exclude from coverage disabilities consisting solely of blindness or partial blindness when such condition existed at the time the policy was issued. With respect to all other conditions, including the underlying cause of the blindness or partial blindness, persons who are blind or partially blind shall be subject to the same standards of sound actuarial principles or actual or reasonably anticipated experience as are sighted persons.
  - d. Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazard by refusing to insure, refusing to renew, canceling, or limiting the amount of insurance coverage on a property or casualty risk solely because of the geographic location of

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<sup>87</sup> Section 26.1-04-03 was also amended by section 1 of House Bill No. 1175, chapter 215.



the risk, unless the action is the result of the application of sound underwriting and actuarial principles related to actual or reasonably anticipated loss experience.

Approved April 26, 2011  
Filed April 26, 2011

## CHAPTER 215

### HOUSE BILL NO. 1175

(Representatives Keiser, Ruby, Vigesaa)  
(Senators Andrist, Klein, Laffen)

AN ACT to create and enact a new subdivision to subsection 8 of section 26.1-04-03 of the North Dakota Century Code, relating to limitations on insurance rebates; and to amend and reenact sections 26.1-04-06 and 26.1-25-16 of the North Dakota Century Code, relating to limitations on insurance rebates.

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

<sup>88</sup> **SECTION 1.** A new subdivision to subsection 8 of section 26.1-04-03 of the North Dakota Century Code is created and enacted as follows:

Notwithstanding any other provision in this subsection, if the cost does not exceed an aggregate retail value of fifty 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 2. AMENDMENT.** Section 26.1-04-06 of the North Dakota Century Code is amended and reenacted as follows:

#### **26.1-04-06. Insured persons and applicants for insurance prohibited from accepting rebates - Exception.**

1. An insurance producer or agent of any insurance or surety company, reciprocal, benevolent society, or any other insurance organization or association, however constituted or entitled, may not grant, and an insured person or party or applicant for insurance, either directly or indirectly, may not receive or accept, or agree to receive or accept, any rebate of premium or of any part thereof, or all or any part of any insurance producer's commission

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<sup>88</sup> Section 26.1-04-03 was also amended by section 1 of Senate Bill No. 2237, chapter 214.

thereon, or any favor or advantage, or any share in any benefit to accrue under any insurance policy, or any other valuable consideration or inducement other than such as may be specified in the policy, except as provided in an applicable filing which is in effect under the provisions of the laws regulating insurance rates or except as provided under subsection 2.

2. Notwithstanding any other provision in this section, if the cost does not exceed an aggregate retail value of fifty 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, promotion 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 3. AMENDMENT.** Section 26.1-25-16 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-25-16. Rebates prohibited - Exception.**

1. No insurance producer may knowingly charge, demand, or receive a premium for any insurance policy except in accordance with this chapter. No insurer or employee of an insurer, and no broker or agent may pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit, or reduction of the premium named in an insurance policy, or any special favor or advantage in the dividends or other benefits to accrue on the policy, or any valuable consideration or inducement whatever, not specified in the insurance policy, except to the extent provided for in applicable filing. No insured named in an insurance policy, nor any employee of the insured, may knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement, credit, or reduction of premium, or any such special favor or advantage or valuable consideration or inducement. This section does not prohibit the payment of commissions or other compensation to licensed insurance producers, nor any insurer from allowing or returning to its participating policyholders, members, or subscribers dividends, savings, or unabsorbed premium deposits. As used in this section, "insurance" includes suretyship and "policy" includes bond.
2. Notwithstanding any other provision in this section, if the cost does not exceed an aggregate retail value of fifty 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, promotion 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.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 216

### SENATE BILL NO. 2064

(Industry, Business and Labor Committee)  
(At the request of the Insurance Commissioner)

AN ACT to amend and reenact sections 26.1-22.1-01, 26.1-22.1-09, and 26.1-22.1-10 of the North Dakota Century Code, relating to inspection and certificate fees and certificates of inspection of boilers.

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

**SECTION 1. AMENDMENT.** Section 26.1-22.1-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **26.1-22.1-01. Definition.**

As used in this chapter, unless the context otherwise requires, "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 heating or vaporizing liquids other than water when these units are separate from processing systems and are complete within themselves.

**SECTION 2. AMENDMENT.** Section 26.1-22.1-09 of the North Dakota Century Code is amended and reenacted as follows:

##### **26.1-22.1-09. Inspection and certificate fees.**

Upon completion of inspection, the owner or user of a boiler shall pay to the commissioner fees or a combination of inspection and certificate fees. Inspection fees must be determined by the commissioner. Certificate fees are determined by section 26.1-22.1-10. The commissioner must determine and may annually adjust a fee scale for the internal inspections of power boilers, internal inspections of low pressure heating boilers, external inspections of all boilers, and inspection of boilers used exclusively for exhibition purposes.

Not more than ~~one~~two hundred ~~forty~~ dollars may be charged or collected for any one inspection of a boiler except for special inspections made upon request. ~~Not more than seventy-five dollars may be charged or collected for any one inspection of a steam traction engine except for special inspections made upon request.~~ All other inspections made by the chief boiler inspector, including shop inspections and reviews and special inspections when requested by the owner or user of a boiler, must be charged at a rate not to exceed ~~three~~five hundred ~~forty~~ dollars per day or ~~two~~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 commissioner. The annual fee for the issuance of a reciprocal commission card for a special inspector is ~~twenty-five~~forty dollars and the annual fee for the issuance of a welder-qualified card is ~~ten~~twenty dollars. The fee for taking an examination for a hobby boiler operating license is twenty-five dollars and the fee for a hobby boiler

operating license is twenty-five dollars. A hobby boiler operating license issued under this section is valid for six years.

**SECTION 3. AMENDMENT.** Section 26.1-22.1-10 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-22.1-10. Certificate of inspection - Certificate to be posted.**

The commissioner shall issue a certificate of inspection for each boiler inspected upon receipt of an inspection report certifying that the boiler is in a safe condition to be operated. The commissioner shall charge a fee of 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 26.1-22.1-07 and 26.1-22.1-08. The fees are the liability of the owner or user and must be paid in accordance with rules adopted by the commissioner. No certificate may be issued for any boiler not in a safe condition to be operated or for a boiler for which the inspection and certificate fees have not been paid in full. No certificate is valid for a period of more than thirty-six months for power boilers described in subsection 2 of section 26.1-22.1-07, and no more than twelve months for other power boilers, 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.

Approved April 19, 2011  
Filed April 19, 2011

## CHAPTER 217

### HOUSE BILL NO. 1160

(Representative Keiser)

AN ACT to create and enact two new sections to chapter 26.1-34.2 of the North Dakota Century Code, relating to annuity transaction practices; and to amend and reenact sections 26.1-34.2-02, 26.1-34.2-03, and 26.1-34.2-04 of the North Dakota Century Code, relating to annuity transaction practices; and to provide a penalty.

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

**SECTION 1.** A new section to chapter 26.1-34.2 of the North Dakota Century Code is created and enacted as follows:

##### Scope.

This chapter applies to any recommendation to purchase, exchange, or replace an annuity made to a consumer by an insurance producer, or an insurer when no producer is involved, that results in the purchase, exchange, or replacement recommended.

**SECTION 2. AMENDMENT.** Section 26.1-34.2-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **26.1-34.2-02. Definitions.**

1. "Annuity" means ~~a fixed annuity or variable annuity~~ an annuity that is an insurance product under state law which is individually solicited, whether the product is classified as an individual or group annuity.
2. "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance, including annuities.
3. "Insurer" means a company required to be licensed under the laws of this state to provide insurance products, including annuities.
4. "Recommendation" means advice provided by an insurance producer, or an insurer when no producer is involved, to an individual consumer ~~that~~which results in a purchase, replacement, or exchange of an annuity in accordance with that advice.
5. "Replacement" means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be:
  - a. Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer, or otherwise terminated;

- b. Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;
  - c. Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;
  - d. Reissued with any reduction in cash value; or
  - e. Used in a financed purchase.
6. "Suitability information" means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:
- a. Age;
  - b. Annual income;
  - c. Financial situation and needs, including the financial resources used for the funding of the annuity;
  - d. Financial experience;
  - e. Financial objectives;
  - f. Intended use of the annuity;
  - g. Financial time horizon;
  - h. Existing assets, including investment and life insurance holdings;
  - i. Liquidity needs;
  - j. Liquid net worth;
  - k. Risk tolerance; and
  - l. Tax status.

**SECTION 3. AMENDMENT.** Section 26.1-34.2-03 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-34.2-03. Duties of insurers and insurance producers.**

1. In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer when no producer is involved, must have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to the consumer's investments and other insurance products and as to the consumer's financial situation and needs, including the consumer's suitability information, and that there is a reasonable basis to believe all of the following:



- a. The consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge; potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity; mortality and expense fees; investment advisory fees; potential charges for and features of riders; limitations on interest returns; insurance and investment components; and market risk;
  - b. The consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization, or death or living benefit;
  - c. The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable, and in the case of an exchange or replacement, the transaction as a whole is suitable, for the particular consumer based on the consumer's suitability information; and
  - d. In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable, including taking into consideration whether:
    - (1) The consumer will incur a surrender charge; be subject to the commencement of a new surrender period; lose existing benefits, such as death, living, or other contractual benefits; or be subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements;
    - (2) The consumer would benefit from product enhancements and improvements; and
    - (3) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding thirty-six months.
2. Before the execution of a purchase, replacement, or exchange of an annuity resulting from a recommendation, an insurance producer, or an insurer when no producer is involved, shall make reasonable efforts to obtain the consumer's suitability information concerning:
    - a. The consumer's financial status;
    - b. The consumer's tax status;
    - c. The consumer's investment objectives; and
    - d. Other information used or considered to be reasonable by the insurance producer, or the insurer when no producer is involved, in making recommendations to the consumer.
  3. a. Except as provided under subdivision b, neither an insurance producer nor an insurer when no producer is involved has an obligation to a consumer under subsection 1 related to a recommendation if a consumer:
    - (1) Refuses to provide relevant information requested by the insurer or insurance producer;

- ~~(2) Decides to enter into an insurance transaction that is not based on a recommendation of the insurer or insurance producer; or~~
  - ~~(3) Fails to provide complete or accurate information.~~
- ~~b. An insurer or insurance producer's recommendation subject to subdivision a must be reasonable under all the circumstances actually known to the insurer or insurance producer at the time of the recommendation.~~
- 4. a. An insurer shall ensure that a system to supervise recommendations that is reasonably designed to achieve compliance with this chapter is established and maintained by complying with subdivisions c through e, or shall establish and maintain such a system, including:
  - ~~(1) Maintaining written procedures; and~~
  - ~~(2) Conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this chapter.~~
- ~~b. A general agent and independent agency shall adopt a system established by an insurer to supervise recommendations of its insurance producers that is reasonably designed to achieve compliance with this chapter, or shall establish and maintain such a system, including:~~
  - ~~(1) Maintaining written procedures; and~~
  - ~~(2) Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this chapter.~~
- ~~e. An insurer may contract with a third party, including a general agent or independent agency, to establish and maintain a system of supervision as required by subdivision a with respect to insurance producers under contract with or employed by the third party.~~
- ~~d. An insurer shall make reasonable inquiry to ensure that the third party contracting under subdivision c is performing the functions required under subdivision a and shall take action as is reasonable under the circumstances to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing all of the following:~~
  - ~~(1) The insurer annually obtains a certification from a third party senior manager who has responsibility for the delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; and~~
  - ~~(2) The insurer, based on reasonable selection criteria, periodically selects third parties contracting under subdivision c for a review to determine whether the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances.~~

- e. ~~An insurer that contracts with a third party pursuant to subdivision c and that complies with the requirements to supervise in subdivision d has fulfilled its responsibilities under subdivision a.~~
  - f. ~~An insurer, general agent, or independent agency is not required by subdivision a or b to:~~
    - ~~(1) Review, or provide for review of, all insurance producer solicited transactions; or~~
    - ~~(2) Include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer, general agent, or independent agency.~~
  - g. ~~A general agent or independent agency contracting with an insurer pursuant to subdivision c shall promptly, when requested by the insurer pursuant to subdivision d, give a certification as described in subdivision d or give a clear statement that it is unable to meet the certification criteria.~~
  - h. ~~A person may not provide a certification under paragraph 1 of subdivision d unless:~~
    - ~~(1) The person is a senior manager with responsibility for the delegated functions; and~~
    - ~~(2) The person has a reasonable basis for making the certification.~~
5. ~~Compliance with the financial industry regulatory authority conduct rules pertaining to suitability satisfies the requirements under this section for the recommendation of annuities registered under the Securities Act of 1933 [15 U.S.C. 77a et seq.] or rules or regulations adopted under that act. However, nothing in this subsection limits the insurance commissioner's ability to enforce the provisions of this chapter.~~
6. ~~This chapter does not preempt, supersede, or limit any provision of any securities law of this state or any rule, order, or notice issued thereunder. Except as permitted under subsection 4, an insurer may not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.~~
4. a. Except as provided under subdivision b, neither an insurance producer, nor an insurer, has any obligation to a consumer under subsection 1 or 3 related to any annuity transaction if:
- (1) A recommendation was not made;
  - (2) A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;
  - (3) A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or
  - (4) A consumer decides to enter an annuity transaction that is not based on a recommendation of the insurer or the insurance producer.

- b. An insurer's issuance of an annuity subject to subdivision a must be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.
5. An insurance producer or, when no insurance producer is involved, the responsible insurer representative, at the time of sale shall:
- a. Make a record of any recommendation subject to subsection 1;
  - b. Obtain a customer signed statement documenting a customer's refusal to provide suitability information, if any; and
  - c. Obtain a customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter an annuity transaction that is not based on the insurance producer's or insurer's recommendation.
6. a. An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and the insurer's insurance producers' compliance with this chapter, including the following:
- (1) The insurer shall maintain reasonable procedures to inform the insurer's insurance producers of the requirements of this chapter and shall incorporate the requirements of this chapter into relevant insurance producer training manuals.
  - (2) The insurer shall establish standards for insurance producer product training and shall maintain reasonable procedures to require the insurer's insurance producers to comply with the requirements of section 4 of this Act.
  - (3) The insurer shall provide product-specific training and training materials that explain all material features of the insurer's annuity products to the insurer's insurance producers.
  - (4) The insurer shall maintain procedures for review of each recommendation before issuance of an annuity which are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means, including physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria.
  - (5) The insurer shall maintain reasonable procedures to detect recommendations that are not suitable. This may include confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters, and programs of internal monitoring. This paragraph does not prevent an insurer from complying with this paragraph by applying sampling procedures or by confirming suitability information after issuance or delivery of the annuity.

- (6) Annually, the insurer shall provide a report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.
- b. (1) This subsection does not restrict an insurer from contracting for performance of a function, including maintenance of procedures, required under subdivision a. An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to section 26.1-34.2-04, regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with paragraph 2.
- (2) An insurer's supervision system under subdivision a must include supervision of contractual performance under this subsection. This includes the following:
- (a) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and
- (b) Annually, obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.
- c. An insurer is not required to include in the insurer's system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer.
7. An insurance producer may not dissuade, or attempt to dissuade, a consumer from:
- a. Responding truthfully to an insurer's request for confirmation of suitability information;
- b. Filing a complaint; or
- c. Cooperating with the investigation of a complaint.
8. a. Sales made in compliance with the financial industry regulatory authority requirements pertaining to suitability and supervision of annuity transactions must satisfy the requirements under this chapter. This subsection applies to financial industry regulatory authority broker-dealer sales of variable annuities and fixed annuities if the suitability and supervision is similar to those applied to variable annuity sales. However, this subsection does not limit the insurance commissioner's ability to enforce, including investigate, this chapter.
- b. For subdivision a to apply, an insurer shall:
- (1) Monitor the financial industry regulatory authority member broker-dealer using information collected in the normal course of an insurer's business; and

- (2) Provide to the financial industry regulatory authority member broker-dealer information and reports that are reasonably appropriate to assist the financial industry regulatory authority member broker-dealer to maintain its supervision system.

**SECTION 4.** A new section to chapter 26.1-34.2 of the North Dakota Century Code is created and enacted as follows:

**Insurance producer training.**

1. An insurance producer may not solicit the sale of an annuity product unless the insurance producer has adequate knowledge of the product to recommend the annuity and the insurance producer is in compliance with the insurer's standards for product training. An insurance producer may rely on insurer-provided product-specific training standards and materials to comply with this subsection.
2.
  - a.
    - (1) An insurance producer who engages in the sale of annuity products shall complete a one-time, four-hour training course.
    - (2) An insurance producer who holds a life insurance line of authority on the effective date of this Act and who desires to sell annuities shall complete the requirements of this subsection within twelve months after the effective date of this Act. An individual who obtains a life insurance line of authority on or after the effective date of this Act may not engage in the sale of annuities until the annuity training course required under this subsection has been completed.
  - b. The training required under this subsection must include information on the following topics:
    - (1) The types of annuities and various classifications of annuities;
    - (2) Identification of the parties to an annuity;
    - (3) How fixed, variable, and indexed annuity contract provisions affect consumers;
    - (4) The application of income taxation of qualified and nonqualified annuities;
    - (5) The primary uses of annuities; and
    - (6) Appropriate sales practices, replacement, and disclosure requirements.
  - c. Providers of courses intended to comply with this subsection shall cover all topics listed in the prescribed outline and may not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required outline.
  - d. Providers of annuity training shall issue certificates of completion.

- e. The satisfaction of the training requirements of another state which are substantially similar to the provisions of this subsection are deemed to satisfy the training requirements of this subsection in this state.
- f. An insurer shall verify that an insurance producer has completed the annuity training course required under this subsection before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy the insurer's responsibility under this subsection by obtaining certificates of completion of the training course or obtaining reports from a reasonably reliable commercial database vendor that has a reporting arrangement with insurance education providers.

**SECTION 5. AMENDMENT.** Section 26.1-34.2-04 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-34.2-04. Mitigation of responsibility - Penalty.**

1. ~~The commissioner may order:~~
  - a. ~~An insurer to take reasonably appropriate corrective action for a consumer harmed by the insurer's, or by its insurance producer's, violation of this chapter;~~
  - b. ~~An insurance producer to take reasonably appropriate corrective action for a consumer harmed by the insurance producer's violation of this chapter; and~~
  - e. ~~A general agency or independent agency that employs or contracts with an insurance producer to sell, or solicit the sale of, annuities to consumers, to take reasonably appropriate corrective action for a consumer harmed by the insurance producer's violation of this chapter.~~An insurer is responsible for compliance with this chapter. If a violation occurs, either because of the action or inaction of the insurer or the insurer's insurance producer, the commissioner may order:
    - a. An insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer's or by the insurer's insurance producer's violation of this chapter;
    - b. A general agency, independent agency, or the insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this chapter; and
    - c. Appropriate penalties and sanctions.
2. Any applicable penalty under section 26.1-01-03.3 for a violation of subsection 1 or 2 or subdivision b of subsection 3 of section 26.1-34.2-03 may be reduced or eliminated, according to a schedule adopted by the commissioner, if corrective action for the consumer was taken promptly after a violation was discovered.

## CHAPTER 218

### HOUSE BILL NO. 1127

(Representative Keiser)  
(At the request of the Insurance Commissioner)

AN ACT to create and enact two new sections to chapter 26.1-36 of the North Dakota Century Code, relating to health carrier external appeals and internal claims and appeals procedures; to amend and reenact sections 26.1-03-01, 26.1-26.4-01, and 26.1-36-44 of the North Dakota Century Code, relating to limitation on health insurance company risks, utilization review, and independent external reviews; to provide for application; to provide an effective date; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 26.1-03-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **26.1-03-01. Limitation on risks acceptable by company.**

An insurance company transacting an insurance business in this state may not expose itself to loss on any one risk or hazard to an amount exceeding ten percent of its paid-up capital and surplus if a stock company, or ten percent of its surplus if a mutual company, unless the excess is reinsured. An insurance company offering group or individual insurance that is subject to the lifetime or annual benefit limit restrictions of the 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], is not subject to this section.

**SECTION 2. AMENDMENT.** Section 26.1-26.4-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **26.1-26.4-01. Purpose and scope.**

This chapter applies to grandfathered health plans unless a health care insurer or utilization review agent determines to extend the protections of section 5 of this Act to a grandfathered plan. "Grandfathered health plan" has the meaning stated in the 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]. The purpose of this chapter is to:

1. Promote the delivery of quality health care in a cost-effective manner;
2. Assure that utilization review agents adhere to reasonable standards for conducting utilization review;
3. Foster greater coordination and cooperation between health care providers and utilization review agents;
4. Improve communications and knowledge of benefits among all parties concerned before expenses are incurred; and



5. Ensure that utilization review agents maintain the confidentiality of medical records in accordance with applicable laws.

**SECTION 3. AMENDMENT.** Section 26.1-36-44 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-36-44. Independent external review.**

This section applies to grandfathered health plans. "Grandfathered health plan" has the meaning stated in the 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]. Every insurance company, nonprofit health service corporation, and health maintenance organization that offers an accident and health line of insurance shall establish and implement an independent external review mechanism to review and determine whether medical care rendered under the line of insurance was medically necessary and appropriate to the claim as submitted by the provider. For purposes of this section, "independent external review" means a review conducted by the North Dakota health care review, inc., another peer review organization meeting the requirements of section 1152 of the Social Security Act, or any person designated by the commissioner to conduct an independent external review. A determination made by the independent external reviewer is binding on the parties. Costs associated with the independent external review are the responsibility of the nonprevailing party. A provider may not use an independent external review under this section unless the provider first has exhausted all internal appeal processes offered by the insurance company, nonprofit health service corporation, or health maintenance organization. The insurance commissioner shall take steps necessary to ensure compliance with this section. If federal laws or rules relating to independent external review are amended, repealed, or otherwise changed, the insurance commissioner shall adopt rules to ensure the independent external review procedure is in compliance with and substantively equivalent to the federal requirements.

**SECTION 4.** A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

**External appeals procedures.**

An insurance company, nonprofit health services corporation, or health maintenance organization may not deliver, issue, execute, or renew any health insurance policy, health service contract, or evidence of coverage on an individual, group, blanket, franchise, or association basis unless the policy, contract, or evidence of coverage meets the minimum requirements of 42 U.S.C. 300gg-19 and complies with 29 U.S.C. 1133, 29 CFR 2560.503-1; 42 U.S.C. 300gg-19, 26 CFR 54.9815-2719T; 29 U.S.C. 1185d, 29 CFR 2590.715-2719; and 26 U.S.C. 9815, 45 CFR 147.136. The insurance commissioner may take steps necessary to ensure compliance with this section. If federal laws or rules relating to external appeals are amended, repealed, or otherwise changed, the insurance commissioner shall adopt rules to ensure the external appeals procedure is in compliance with and substantively equivalent to the federal requirements.

**SECTION 5.** A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

### **Internal claims and appeals procedures.**

An insurance company, nonprofit health services corporation, or health maintenance organization may not deliver, issue, execute, or renew any health insurance policy, health service contract, or evidence of coverage on an individual, group, blanket, franchise, or association basis unless the policy, contract, or evidence of coverage meets the minimum requirements of 42 U.S.C. 300gg-19 and complies with 29 U.S.C. 1133, 29 CFR 2560.503-1; 42 U.S.C. 300gg-19, 26 CFR 54.9815-2719T; 29 U.S.C. 1185d, 29 CFR 2590.715-2719; and 26 U.S.C. 9815, 45 CFR 147.136. The insurance commissioner may take steps necessary to ensure compliance with this section. If federal laws or rules relating to internal claims and appeals are amended, repealed, or otherwise changed, the insurance commissioner shall adopt rules to ensure the internal claims and appeals procedure is in compliance with and substantively equivalent to the federal requirements.

**SECTION 6. APPLICATION.** The citations to federal laws and rules in this Act refer to the versions in effect on the effective date of this Act. In carrying out the requirements of this Act, the insurance commissioner shall provide regular updates to the legislative management during the 2011-12 interim. The commissioner shall submit proposed legislation to the legislative management for consideration at a special legislative session if the commissioner is required by federal law to implement any program or requirement before January 1, 2013. For any program or requirement that must be implemented between January 1, 2013, and January 1, 2014, the commissioner shall submit proposed legislation to the legislative management before October 15, 2012.

**SECTION 7. EFFECTIVE DATE.** This Act becomes effective on July 1, 2011.

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

Approved April 27, 2011

Filed April 27, 2011

## CHAPTER 219

### HOUSE BILL NO. 1165

(Representatives Kreidt, Pollert, Porter, Weisz)  
(Senators Fischer, Kilzer)

AN ACT to create and enact a new section to chapter 26.1-36 of the North Dakota Century Code, relating to individual accident and health insurance coverage.

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

**SECTION 1.** A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

#### **Health insurance coverage not required.**

1. Regardless of whether a resident of this state has or is eligible for health insurance coverage under a health insurance policy, health service contract, or evidence of coverage by or through an employer or under a plan sponsored by the state or federal government, the resident is not required to obtain or maintain a policy of individual health coverage except as may be required by a court or by the department of human services through a court or administrative proceeding.
2. This section does not render a resident of this state liable for any penalty, assessment, fee, or fine as a result of the resident's failure to procure or obtain health insurance coverage.
3. This section does not apply to:
  - a. An individual who voluntarily applies for coverage under a state-administered program pursuant to the medical assistance program under title XIX of the federal Social Security Act [42 U.S.C. 1396 et seq.] or the state's children's health insurance program under title XXI of the federal Social Security Act [42 U.S.C. 1397aa et seq.].
  - b. A student who is required by an institution of higher education to obtain and maintain health insurance as a condition of enrollment.
  - c. An individual who is required by a religious institution to obtain and maintain health insurance.
4. This section does not impair the rights of an individual to contract privately for health insurance coverage for family members or former family members.

Approved April 4, 2011  
Filed April 4, 2011

## CHAPTER 220

### SENATE BILL NO. 2111

(Industry, Business and Labor Committee)  
(At the request of the Insurance Commissioner)

AN ACT to create and enact section 26.1-38.1-17 of the North Dakota Century Code, relating to the application of effective dates of amendments to member insurers of the North Dakota life and health insurance guaranty association; and to amend and reenact section 26.1-38.1-01, subsections 12, 20, and 23 of section 26.1-38.1-02, subdivision b of subsection 1 of section 26.1-38.1-05, paragraph 4 of subdivision b of subsection 2 of section 26.1-38.1-05, subsection 3 of section 26.1-38.1-06, subdivision e of subsection 14 of section 26.1-38.1-06, subsection 4 of section 26.1-38.1-07, subsection 4 of section 26.1-38.1-08, and sections 26.1-38.1-11 and 26.1-38.1-15 of the North Dakota Century Code, relating to coverage limits, powers and duties, and assessments of the North Dakota life and health insurance guaranty association.

#### 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.**

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 of the persons covered under subdivision b.
  - b. To persons who are owners of or certificate holders 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 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 the insurer 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, if any coverage is provided by the association of another state to the person.
  - 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, 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 direct, nongroup life, health, or annuity policies or contracts, 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 chapter does not provide coverage for:
  - a. Any portion of a policy or contract not guaranteed by the insurer, or under which the risk is borne by the policy owner or contract owner;
  - b. Any policy or contract of reinsurance, unless assumption certificates have been issued pursuant to the reinsurance policy or contract;
  - c. Any portion of a policy or contract to the extent that the rate of interest on which the portion of the policy or contract is based or to the extent that the rate of interest, crediting of a rate of interest, or similar factor determined by using an index or other external reference stated in the policy or contract which is employed in calculating returns or changes in value:
    - (1) Averaged over the period of four years prior to the date on which the association member insurer becomes ~~obligated with respect to such policy or contract~~ an impaired or insolvent insurer under this chapter, exceeds a rate of interest determined by subtracting two percentage points from Moody's corporate bond yield average averaged for that same four-year period or for such lesser period if the policy or contract was issued less than four years ~~before the association became obligated prior to the date on which the member insurer becomes an impaired or insolvent insurer under this chapter~~; and
    - (2) On and after the date on which the association member insurer becomes ~~obligated with respect to such policy or contract~~ an impaired or insolvent insurer under this chapter, 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. 1144;
    - (2) A minimum premium group insurance plan;
    - (3) A stop-loss group insurance plan; or
    - (4) An administrative services only contract;
  - e. Any portion of a policy or contract to the extent that it provides for dividends or experience rating credits, voting rights, or payment of any

- fees or allowances to any person, including the policy owner or contract owner, in connection with the service to or administration of such policy or contract;
- f. Any policy or contract issued in this state by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue such policy or contract in this state;
  - g. Any unallocated annuity contract issued to or in connection with a benefit plan protected under the federal pension benefit guaranty corporation regardless of whether the federal pension benefit guaranty corporation has yet become liable to make any payments with respect to the benefit plan;
  - h. Any portion of any unallocated annuity contract which is not issued to, or in connection with, a specific employee, union, or association of natural persons benefit plan or a government lottery;
  - i. A portion of a policy or contract to the extent that the assessments required by section 26.1-38.1-06 with respect to the policy or contract are preempted 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 insurer to the contract owner or policy owner, including:
    - (1) Claims based on marketing materials;
    - (2) Claims based on side letters, riders, or other documents that were issued by the insurer without meeting applicable policy form filing or approval requirements;
    - (3) Misrepresentations of or regarding policy benefits;
    - (4) Extracontractual claims; or
    - (5) A claim for penalties or consequential or incidental damages;
  - k. A contractual agreement that establishes the member insurer's obligations to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or its trustee, which in each case is not an affiliate of the member insurer; ~~and~~
  - l. A portion of a policy or contract to the extent it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but which has not been credited to the policy or contract, or as to which the policy owner's or contract owner's rights are subject to forfeiture, as of the date the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier. If a policy's or contract's interest or changes in value are credited less frequently than annually, then for purposes of determining the values that have been credited and are not subject to forfeiture under this subdivision, the interest or changes in value determined by using the procedures defined in the policy or contract will be credited as if the contractual date of crediting interest or changing values was the date of

impairment or insolvency, whichever is earlier, and is not subject to forfeiture; 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, chapter 7 of title 42 of the United States Code (commonly known as medicare part C and part D) or any regulations issued pursuant thereto.

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 insurer is liable or would have been liable if it were not an impaired or insolvent insurer;
  - b. (1) With any respect to one life, regardless of the number of policies, or contracts:
    - (4) (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;
    - (2) (b) In health insurance benefits:
      - [1] One hundred thousand dollars in health insurance benefits for coverages not defined as disability insurance or basic hospital, medical, and surgical insurance or major medical insurance or long-term care insurance, including any net cash surrender and net cash withdrawal values; or
      - (2) Three hundred thousand dollars for disability 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.
    - (c) OneTwo hundred fifty thousand dollars in the present value of annuity benefits, including net cash surrender and net cash withdrawal values;
  - e.(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, ~~one~~two hundred fifty thousand dollars in present value annuity benefits, including net cash surrender and net cash withdrawal values;
  - d.(3) With respect to each payee of a structured settlement annuity or beneficiary, or beneficiaries of the payee if deceased, ~~one~~two hundred fifty thousand dollars in present value annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal values, if any; or
  - (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 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.
- e-(5) With respect to either one contract owner provided coverage under subparagraph c of paragraph 2 of subdivision b of subsection 1; or one plan sponsor whose plans own directly or in trust one or more unallocated annuity contracts not included in paragraph 2 of subdivision eb, 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.
5. ~~However, under subsection 4 in no event shall the association be obligated to cover more than an aggregate of three hundred thousand dollars in benefits with respect to any one life under subdivision b of subsection 4, or with respect to one owner of multiple nongroup policies of life insurance, whether the policy owner is an individual, firm, corporation, or other person, and 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.~~
6. (6) The limitations set forth in this subsection-4 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.
- 7-5. In performing its obligations to provide coverage under this chapter, the association is not required to guarantee, assume, reinsure, or perform, or cause to be guaranteed, assumed, reinsured, 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.

**SECTION 2. AMENDMENT.** Subsections 12, 20, and 23 of section 26.1-38.1-02 of the North Dakota Century Code are amended and reenacted as follows:

12. "Member insurer" means any insurer, including a nonprofit health service corporation, licensed or which holds a certificate of authority to transact in this state any kind of insurance for which coverage is provided under section 26.1-38.1-01, and includes any insurer 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;
  - c. A mandatory state pooling plan;
  - d. 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. An insurance exchange; ~~or~~
  - g. 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. Any entity similar to any of the above.
20. "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 insurer that issued the policies or contracts.
23. "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.

**SECTION 3. AMENDMENT.** Subdivision b of subsection 1 of section 26.1-38.1-05 of the North Dakota Century Code is amended and reenacted as follows:

- b. Provide such moneys, pledges, loans, notes, guarantees, or other means as are proper to effectuate subdivision a and ~~assume~~assure payment of the contractual obligations of the impaired insurer pending action under subdivision a.

**SECTION 4. AMENDMENT.** Paragraph 4 of subdivision b of subsection 2 of section 26.1-38.1-05 of the North Dakota Century Code is amended and reenacted as follows:

- (4) Alternative policies 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 of various types ~~effor~~ future issuance without regard to any particular impairment or insolvency.

**SECTION 5. AMENDMENT.** Subsection 3 of section 26.1-38.1-06 of the North Dakota Century Code is amended and reenacted as follows:

3. The amount of any class A assessment must be determined ~~byat the discretion of the board of directors and may~~ must be authorized and called on a pro rata or non-pro rata basis. ~~If pro rata, the board may provide that it be credited against future class B assessments. The total of all non-pro rata assessments may not exceed one hundred fifty dollars per member insurer in any one calendar year.~~

**SECTION 6. AMENDMENT.** Subdivision e of subsection 14 of section 26.1-38.1-06 of the North Dakota Century Code is amended and reenacted as follows:

- 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 shall be paid at the rate actually earned by the association.

**SECTION 7. AMENDMENT.** Subsection 4 of section 26.1-38.1-07 of the North Dakota Century Code is amended and reenacted as follows:

4. The plan of operation must, in addition to requirements enumerated elsewhere in this chapter:
  - a. Establish procedures for handling the assets of the association;
  - b. Establish the amount and method of reimbursing members of the board of directors under section 26.1-38.1-04;
  - c. Establish regular places and times for meetings, including telephone conference calls of the board of directors;
  - d. Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;
  - e. Establish the procedures whereby ~~elections~~ selections for the board of directors will be made and submitted to the commissioner;
  - f. Establish any additional procedures for assessments under section 26.1-38.1-06; ~~and~~
  - g. Contain additional provisions necessary or proper for the execution of the powers and duties of the association;

- h. Establish procedures whereby a director may be removed for cause, including if a member insurer director becomes an impaired or insolvent insurer; and
- i. Require the board of directors to establish a policy and procedures for addressing conflicts of interest.

**SECTION 8. AMENDMENT.** Subsection 4 of section 26.1-38.1-08 of the North Dakota Century Code is amended and reenacted as follows:

4. The liquidator, rehabilitator, or conservator of any impaired or insolvent insurer may notify any interested persons of the effect of this chapter.

**SECTION 9. 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, ~~upon the termination of the impairment or insolvency of the insurer, or~~ except 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, as used in this subsection, are that proportion of the assets which the reserves that should have been established for such policies bear to the reserves that should have been established for all policies of insurance written by the impaired or insolvent insurer.
4. 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 an 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 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 of the continuing or successor 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 such insurer have been fully recovered by the association.
7. a. If an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under the order has the right to recover on behalf of the insurer, from any affiliate that controlled its capital stock, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the five years preceding the petition for liquidation or rehabilitation subject to the limitations of ~~this subsection and subsections 8 and 9~~ subdivisions b, c, and d.
- ~~8.~~ b. No such distribution is recoverable if the insurer shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.
- ~~9.~~ c. Any person who was an affiliate that controlled the insurer at the time the distributions were paid is liable up to the amount of distributions the person received. Any person who was an affiliate that controlled the insurer at the time the distributions were declared is liable up to the amount of distributions 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.
- ~~10.~~ 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.
- ~~14.~~ e. If any person liable under ~~subsection 8~~ 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 10. AMENDMENT.** Section 26.1-38.1-15 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-38.1-15. Stay of proceedings - Reopening default judgments.**

All proceedings in which the insolvent insurer is a party in any court in this state must be stayed ~~sixtyone hundred eighty~~ days from the date an order of liquidation, rehabilitation, or conservation is final to permit proper legal action by the association on any matters germane to its powers or duties. As to judgment under any decision, order, verdict, or finding based on default, the association may apply to have such

judgment set aside by the same court that made such judgment and must be permitted to defend against such suit on the merits.

**SECTION 11.** Section 26.1-38.1-17 of the North Dakota Century Code is created and enacted as follows:

**26.1-38.1-17. Prospective application.**

This Act applies to cases involving an insolvent insurer which is placed under an order of liquidation with a finding of insolvency on or after the effective date of this Act. For cases involving an insolvent insurer which was placed under an order of liquidation with a finding of insolvency prior to the effective date of this Act, the provisions of this chapter in effect at the time of the order of liquidation shall apply.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 221

### SENATE BILL NO. 2062

(Senators Lyson, Oehlke, Olafson, O'Connell)  
(Representative Sukut)

AN ACT to create and enact a new chapter to title 26.1 of the North Dakota Century Code, relating to property and casualty certificates of insurance.

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

**SECTION 1.** A new chapter to title 26.1 of the North Dakota Century Code is created and enacted as follows:

##### **Definitions.**

As used in this chapter:

1. "Certificate holder" means a person, other than a policyholder, to which a certificate of insurance has been issued.
2. "Certificate of insurance" means a document or instrument, regardless of how titled or described, that is prepared or issued by an insurer or insurance producer as a statement of property or casualty insurance coverage. The term does not include a policy of insurance or insurance binder.
3. "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit, or negotiate property or casualty insurance.
4. "Insurer" means any organization that issues property or casualty insurance.
5. "Policyholder" means a person that contracted with an insurer for property or casualty insurance coverage.

##### **Limitations on issuance of certificates of insurance.**

A person may not prepare, issue, or require the issuance of a certificate of insurance on property, operations, or risks located in this state unless the certificate of insurance form has been filed with the commissioner by or on behalf of the insurer and has been approved by the commissioner. The commissioner may designate as meeting the requirements of this section and not requiring further approval a standard certificate of insurance form, which may include a form promulgated and filed by a national insurance advisory organization, such as the association for cooperative research and development, the American association of insurance services, and the insurance services office.

##### **Certificate of insurance limitations.**

A person may not alter or modify a certificate of insurance form approved by the commissioner; may not demand, require, or issue a certificate of insurance that contains any false or misleading information concerning the policy of insurance to which the certificate of insurance makes reference; and may not knowingly prepare or

issue a certificate of insurance that purports to affirmatively or negatively alter, amend, or extend the coverage provided by the policy. A certificate of insurance may not contain a reference to a construction contract, service contract, or insurance requirement for the purpose of amending coverage afforded by the policy to which the certificate makes reference.

**Notice requirements.**

The only circumstance under which a certificate holder is entitled to the legal right to notice of cancellation, nonrenewal, or any material change or any similar notice concerning a policy of insurance is if the certificate holder has such notice rights under the terms of the policy or under any endorsement to the policy. The terms and conditions of the notice, including the required timing of the notice, are governed by the policy of insurance and may not be altered by a certificate of insurance.

Approved April 19, 2011  
Filed April 20, 2011



## CHAPTER 222

### HOUSE BILL NO. 1308

(Representatives Vigesaa, Frantsvog, Monson, Delmore)  
(Senators Hogue, Klein, Wanzek)

AN ACT to amend and reenact section 26.1-40-17 of the North Dakota Century Code, relating to establishment of primary and excess automobile liability coverages for rental vehicles.

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

**SECTION 1. AMENDMENT.** Section 26.1-40-17 of the North Dakota Century Code is amended and reenacted as follows:

#### **26.1-40-17. Establishment of primary and excess automobile liability coverages in certain instances.**

When an automobile insurance policy which includes only automobile liability coverage, uninsured motorist coverage, underinsured motorist coverage, automobile medical payments coverage, and basic or optional excess no-fault benefits is in force for anyone engaged in the business of selling, repairing, servicing, storing, leasing, renting, or parking motor vehicles and the owner of the vehicles loans, rents, or leases a vehicle to any other person or organization and the vehicle is involved in an accident out of which bodily injury or property damage arises, the following is applicable:

1. If no other automobile insurance policy is in force at the time of the accident for the person or organization to whom the vehicle was loaned, rented, or leased, the coverage provided by the motor vehicle owner's automobile policy extends to the borrower, rentee, or lessee in the event the owner's automobile insurance policy extends coverage to the borrower, rentee, or lessee.
2. If another automobile insurance policy is in force for the person or organization to whom the vehicle was loaned, rented, or leased, any coverage provided by the motor vehicle owner's automobile insurance policy is excess coverage only but limited, however, by the terms of the owner's applicable automobile insurance policy. The policy afforded the person or organization to whom the vehicle was loaned, rented, or leased is primary.

Any policy provisions at variance with this section must be interpreted so as to comply with this section.

Approved April 19, 2011  
Filed April 19, 2011

## CHAPTER 223

### HOUSE BILL NO. 1123

(Industry, Business and Labor Committee)  
(At the request of the Insurance Commissioner)

AN ACT to create and enact sections 26.1-44-01.1, 26.1-44-03.1, 26.1-44-06.1, 26.1-44-10, and 26.1-44-11 of the North Dakota Century Code, relating to surplus lines insurance and enactment of the surplus lines insurance multistate compliance compact; to amend and reenact sections 26.1-44-01, 26.1-44-02, 26.1-44-03, 26.1-44-04, 26.1-44-05, 26.1-44-06, 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 26.1-44-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **26.1-44-01. Surplus lines insurance valid.**

Insurance contracts procured as surplus lines coverage from ~~unauthorized nonadmitted~~ insurers in accordance with this chapter are valid and enforceable as to all parties and must be given recognition in all matters and respects to the same effect as like contracts issued by ~~authorized admitted~~ insurers.

**SECTION 2.** Section 26.1-44-01.1 of the North Dakota Century Code is created and enacted as follows:

##### **26.1-44-01.1. Definitions.**

1. "Admitted insurer" means an insurer licensed to engage in the business of insurance in this state.
2. "Eligible surplus lines insurer" means a nonadmitted insurer with which a surplus lines producer may place surplus lines insurance pursuant to section 26.1-44-03.
3. "Exempt commercial purchaser" means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:
  - a. The person employs or retains a qualified risk manager to negotiate insurance coverage.
  - b. The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of one hundred thousand dollars in the immediately preceding twelve months.
  - c. (1) The person meets at least one of the following criteria:
    - (a) The person possesses a net worth in excess of twenty million dollars, as such amount is adjusted pursuant to paragraph 2.

- (b) The person generates annual revenues in excess of fifty million dollars, as such amount is adjusted pursuant to paragraph 2.
- (c) The person employs more than five hundred full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than one thousand employees in the aggregate.
- (d) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least thirty million dollars, as such amount is adjusted pursuant to paragraph 2.
- (e) The person is a municipality with a population in excess of fifty thousand persons.
- (2) Each fifth January first occurring after July 21, 2010, and ongoing thereafter, the amounts in subparagraphs a, b, and d of paragraph 1 will be adjusted to reflect the percentage change for such five-year period in the consumer price index for all urban consumers published by the bureau of labor statistics of the department of labor.
4. "Home state".
- a. Except as provided in subdivision b, "home state" means, with respect to an insured:
- (1) The state in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or
- (2) If one hundred percent of the insured risk is located out of the state referred to in paragraph 1, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.
- b. If more than one insured from an affiliated group are named insureds on a single nonadmitted insurance contract, the term "home state" means the home state, as determined pursuant to subdivision a, of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.
5. "Independently procured insurance" means insurance procured directly by an insured from a nonadmitted insurer.
6. "Kind of insurance" means one of the types of insurance required to be reported in the annual statement which must be filed with the commissioner by admitted insurers.
7. "Nonadmitted insurance" means any property and casualty insurance permitted to be placed directly or through a surplus lines producer with a nonadmitted insurer eligible to accept such insurance pursuant to section 26.1-44-03.
8. "Nonadmitted insurer" means an insurer not licensed to engage in the business of insurance in this state but does not include a risk retention group

as defined in paragraph 4 of subdivision a of section 2 of the Liability Risk Retention Act of 1986 [15 U.S.C. 3901(a)(4)].

9. "Reciprocal state" means a state that has:
  - a. Entered into a nonadmitted insurance compact; or
  - b. Otherwise adopted the allocation schedule and reporting forms prescribed by a multistate agreement for nonadmitted insurance.
10. "Surplus lines insurance" means any property and casualty insurance in this state on properties, risks, or exposures, located or to be performed in this state, permitted to be placed through a surplus lines producer with a nonadmitted insurer eligible to accept such insurance pursuant to section 26.1-44-03.
11. "Surplus lines producer" means a person licensed under chapter 26.1-26 to place insurance on properties, risks, or exposures located or to be performed in this state with nonadmitted insurers eligible to accept such insurance pursuant to section 26.1-44-03.
12. "Type of insurance" means coverage afforded under the particular policy that is being placed.

**SECTION 3. AMENDMENT.** Section 26.1-44-02 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-44-02. Affidavit as prerequisite of insurance — ContentsDuty to file evidence of insurance and affidavits.**

~~Each surplus lines insurance producer licensed under chapter 26.1-26, within sixty days after the placing of any surplus lines insurance where the insured's home state is this state, shall in every case execute and file with a written report regarding the insurance which must be kept confidential by the commissioner within sixty days of the effective date of any surplus lines insurance policy, indemnity contract, or surety bond an affidavit in acceptable form that after a diligent search, an inability exists to procure the insurance, indemnity contract, or surety bond desired from an insurer authorized to do business in this state. There is a presumption that such inability exists and that a diligent search has been made if the insurance, indemnity contract, or surety bond provides coverage listed by the commissioner as an approved surplus lines coverage. If the commissioner concurs in the allegation in the affidavit, the commissioner may authorize the procuring of the insurance, indemnity contract, or bond from an insurer not authorized to do business in this state. The report must include:~~

1. The name and address of the insured;
2. The identity of the insurer or insurers;
3. A description of the subject and location of the risk;
4. The amount of premium charged for the insurance;
5. A tax allocation spreadsheet detailing the portion of premium attributable to properties, risks, or exposures located in each state;

6. Any other pertinent information as the commissioner may reasonably require; and
7. An affidavit on a 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 must be open to public inspection. The affidavit must affirm that the insured was expressly advised in writing prior to placement of the insurance that:
  - a. The surplus lines insurer with whom the insurance was to be placed is not licensed in this state and is not subject to the state's supervision; and
  - b. In the event of the insolvency of the surplus lines insurer, losses will not be paid by the state insurance guaranty fund.

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 in subsection 7 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 4. AMENDMENT.** Section 26.1-44-03 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-44-03. Surplus lines in solvent insurers insurance.**

~~A surplus lines insurance producer may not knowingly place surplus lines insurance with an insurer that is financially unsound. The surplus lines insurance producer shall ascertain the financial condition of the unauthorized insurer before placing insurance with the insurer. The surplus lines insurance producer may not so insure with:~~

1. ~~Any insurer having less than five hundred thousand dollars of capital and five hundred thousand dollars in surplus, if a stock company, and five hundred thousand dollars in surplus, if a mutual company.~~
2. ~~Any alien insurer that has not established an effective trust fund of at least one million dollars within the United States administered by a recognized financial institution and held for the benefit of all its policyholders in the United States or policyholders and creditors in the United States. The placement of nonadmitted insurance is subject to this section only if the insured's home state is this state. Surplus lines insurance may be placed by a surplus lines producer if:~~
  1. Each insurer is an eligible surplus lines insurer;
  2. Each insurer is authorized to write the kind of insurance in its domiciliary jurisdiction;
  3. The full amount or type of insurance cannot be obtained from insurers who are admitted to do business in this state. The full amount or type of insurance may be procured from eligible surplus lines insurers provided that a diligent search is made among the insurers who are admitted to transact and are actually writing the particular type of insurance in this state if any are writing it;

4. At the time of placement the surplus lines producer has determined that the nonadmitted insurer:
  - a. Has established satisfactory evidence of good repute and financial integrity and has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction which equals the greater of:
    - (1) (a) The minimum capital and surplus requirements under the law of this state; or
      - (b) Fifteen million dollars.
    - (2) The requirements of paragraph 1 may be satisfied by an insurer possessing less than the minimum capital and surplus upon an affirmative finding of acceptability by the commissioner. The finding must be based upon such factors as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, market availability, and company record and reputation within the industry. The commissioner may not make an affirmative finding of acceptability when the nonadmitted insurer's capital and surplus is less than four million five hundred thousand dollars; or
  - b. For an insurer not domiciled in the United States or its territories, the insurer is listed on the quarterly listing of alien insurers maintained by the national association of insurance commissioners international insurers department; and
5. All other requirements of this chapter are met.

**SECTION 5.** Section 26.1-44-03.1 of the North Dakota Century Code is created and enacted 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, 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. Where the insurance covers properties, risks, or exposures located or to be performed both in and out of this state, the sum payable must be computed based on:
  - a. An amount equal to one and three-fourths percent on that portion of the gross premiums allocated to this state plus;
  - b. An amount equal to the portion of the premiums allocated to other states or territories on the basis of the tax rates and fees applicable to other properties, risks, or exposures located or to be performed outside of this state less;
  - c. The amount of gross premiums allocated to this state and returned to the insured.

2. The tax on any portion of the premium unearned at termination of insurance having been credited 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. Under section 26.1-44-11, the state has entered the surplus lines insurance multistate compliance compact for the purpose of collecting, allocating, and disbursing to reciprocal states any funds collected pursuant to subdivision b of subsection 1 applicable to other properties, risks, or exposures located or to be performed outside of this state. To the extent that other states where portions of the properties, risks, or exposures reside have failed to enter into a compact or reciprocal allocation procedure with this state, the net premium tax collected must be retained by this state.
4. At the time of filing the verified report 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 report.
5. If the insured's home state is this state, in determining the amount of premiums taxable in this state, all premiums written, procured, or received in this state must be considered written on properties, risks, or exposures located or to be performed in this state, except premiums which are properly allocated or apportioned and reported as taxable premiums of a reciprocal state.

**SECTION 6. AMENDMENT.** Section 26.1-44-04 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-44-04. Service of process.**

Any insurer desiring to transact any business under this chapter, by any surplus lines insurance producer in this state, shall appoint in writing the commissioner as its true and lawful attorney, upon whom legal process in any action or proceeding against it must be served, and in the writing, shall agree that any legal process against it, which is served upon the attorney, is of the same legal force and validity as if served upon the insurer, and that the authority continues in force so long as any liability remains outstanding in this state. Copies of the appointment certified by the commissioner are sufficient evidence thereof and must be admitted in evidence with the same force and effect as the original. Legal process may not be served upon the insurer except as provided by this section. In any suit on a policy on behalf of the owner or holder of the policy, the service of process must be made as provided by this section, but the action must be prosecuted in the county of the policyholder's residence.

**SECTION 7. AMENDMENT.** Section 26.1-44-05 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-44-05. Endorsement of policyConsumer notice.**

~~Every policy issued under this chapter must be endorsed "THIS POLICY IS ISSUED PURSUANT TO THE NORTH DAKOTA SURPLUS LINES INSURANCE STATUTE UNDER THE SURPLUS LINES PRODUCER'S LICENSE OF \_\_\_\_\_.~~  
~~THE INSURER IS A QUALIFIED SURPLUS LINES INSURER, BUT IS NOT OTHERWISE LICENSED BY THE STATE OF NORTH DAKOTA AND DOES NOT PARTICIPATE IN THE NORTH DAKOTA INSURANCE GUARANTY ASSOCIATION."~~  
 The surplus lines insurance producer shall properly complete the endorsement by

typing or printing the producer's full name in the space provided and shall sign and date the endorsement. If the insured's home state is this state, the surplus lines producer shall give the following consumer notice to every person applying for insurance with a nonadmitted insurer. The notice must be printed in sixteen-point type on a separate document affixed to the application. The applicant shall sign and date a copy of the notice to acknowledge receiving it. The surplus lines producer shall maintain the signed notice in its file for a period of five years from expiration of the policy. The surplus lines producer shall tender a copy of the signed notice to the insured at the time of delivery of each policy the producer transacts with a nonadmitted insurer. The copy must be a separate document affixed to the policy.

"Notice: 1. An insurer that is not licensed in this state is issuing the insurance policy that you have applied to purchase. These companies are called "nonadmitted" or "surplus lines" insurers. 2. The insurer is not subject to the financial solvency regulation and enforcement that applies to licensed insurers in this state. 3. These insurers generally do not participate in insurance guaranty funds created by state law. These guaranty funds will not pay your claims or protect your assets if the insurer becomes insolvent and is unable to make payments as promised. 4. Some states maintain lists of approved or eligible surplus lines insurers and surplus lines producers may use only insurers on the lists. Some states issue orders that particular surplus lines insurers cannot be used. 5. For additional information about the above matters and about the insurer, you should ask questions of your insurance producer or surplus lines producer. You may also contact your insurance department consumer help line."

**SECTION 8. AMENDMENT.** Section 26.1-44-06 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-44-06. Record of business— Filing of statement— ContentRecords of surplus lines producer.**

Every~~if the insured's home state is this state, each~~ surplus lines insurance producer shall keep a separate account of the business under the producer's license and on or before the first day of April in each year shall file with the commissioner a statement for the twelve months preceding, giving the name of the insured to whom a policy or indemnity contract granting unauthorized insurance has been issued, the name and home office of each insurer issuing the policy or contract, the amount of the insurance, the rates charged, the gross premiums charged, the date and term of the policy, and the amount of premium returned on each policy canceled or not taken, with such information and upon such form as required by the commissioner, and pay the commissioner an amount equal to the taxes imposed by law on the premiums of authorized insurance companies. If a surplus lines policy covers risks or exposures only partially in this state, the tax so payable must be computed upon the portion of the premium which is properly allocable to the risks or exposures located in this state. 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. Amount of the insurance, risks, and perils insured;
2. Brief description of the property insured and its location;
3. Gross premium charged;
4. Any return premium paid;



5. Rate of premium charged upon the several items of property;
6. Effective date and terms of the contract;
7. Name and address of the insured;
8. Name and address of the insurer;
9. Amount of tax and other sums to be collected from the insured;
10. Allocation of taxes by state;
11. Identity of the producer of record;
12. Any confirming correspondence from the insurer or its representative; and
13. The application.

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 9.** Section 26.1-44-06.1 of the North Dakota Century Code is created and enacted as follows:

**26.1-44-06.1. Reports - Summary of exported business.**

If the insured's home state is this state, on or before April first of each year, each surplus lines producer shall file with the commissioner on forms prescribed by the commissioner a verified report of all surplus lines insurance transacted during the preceding calendar year, including:

1. Aggregate gross premiums written;
2. Aggregate return premiums;
3. Amount of aggregate tax remitted to this state; and
4. Amount of aggregate tax due or remitted to each other state for which an allocation is made pursuant to section 26.1-44-03.1.

A verified report is not required to be filed when a surplus lines producer has transacted no surplus lines insurance during the preceding calendar year.

**SECTION 10. AMENDMENT.** Section 26.1-44-08 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-44-08. Civil penalty for failure to file statement and pay tax - Action for recovery - Revocation of license - Conditions prerequisite to reissuance - Hearing procedure and judicial review.**

Every ~~such~~ surplus lines insurance producer who fails or refuses to make and file the ~~annual statement~~ verified report required by section 26.1-44-06.1, and to pay the

taxes required to be paid prior to the first day of May after such tax is due, is liable for a fine of twenty-five dollars for each day of ~~delinquency~~delinquency. The tax and fine may be recovered in an action to be instituted by the commissioner in the name of the state, the attorney general representing the commissioner, in any court of competent jurisdiction, and the fine, when so collected, must be paid to the state treasurer and placed to the credit of the general fund. The commissioner, if satisfied that the delay in filing the ~~annual statement~~verified report and 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 ~~insurance~~insurance producer's license ~~of the producer~~ if any surplus lines ~~insurance~~insurance producer fails to make and file the ~~annual statement~~verified report and pay the taxes, or refuses to allow the commissioner to inspect and examine the producer's records of the business transacted by the producer pursuant to this chapter, or fails to keep the records in the manner required by the commissioner, or falsifies the affidavit referred to in section 26.1-44-02.

If the license of a surplus lines ~~insurance~~insurance producer is revoked, whether by the action of the commissioner or by judicial proceedings, another license may not be issued to that surplus lines ~~insurance~~insurance producer until two years have elapsed from the effective date of the revocation, nor until all taxes and fines are paid, nor until the commissioner is satisfied that full compliance with this chapter will be had.

**SECTION 11.** Section 26.1-44-10 of the North Dakota Century Code is created and enacted as follows:

**26.1-44-10. Independently procured insurance - Duty to report and pay tax.**

If the insured's home state is this state, in accordance with subsection 9 of section 26.1-02-05, each insured in this state who independently procures or continues or renews insurance with a nonadmitted insurer on properties, risks, or exposures located or to be performed in whole or in part in this state, other than insurance procured through a surplus lines producer, is subject to the same requirements under this chapter as apply to a surplus lines producer.

**SECTION 12.** Section 26.1-44-11 of the North Dakota Century Code is created and enacted as follows:

**26.1-44-11. Enactment of surplus lines insurance multistate compliance compact.**

The surplus lines insurance multistate compliance compact is enacted into law and entered by this state with all other states legally joining therein in the form substantially as follows:

**ARTICLE I - PURPOSE**

The purposes of this compact are:

1. To implement the express provisions of the Nonadmitted and Reinsurance Reform Act.
2. To protect the premium tax revenues of the compacting states through facilitating the payment and collection of premium tax on nonadmitted insurance; and to protect the interests of the compacting states by supporting the continued availability of such insurance to consumers; and to provide for allocation of premium tax for nonadmitted insurance of multistate risks among the states in accordance with uniform allocation formulas to be developed, adopted, and implemented by the commission.

3. To streamline and improve the efficiency of the surplus lines market by eliminating duplicative and inconsistent tax and regulatory requirements among the states; and promote and protect the interest of surplus lines licensees who assist such insureds and surplus lines insurers, thereby ensuring the continued availability of surplus lines insurance to consumers.
4. To streamline regulatory compliance with respect to nonadmitted insurance placements by providing for exclusive single-state regulatory compliance for nonadmitted insurance of multistate risks, in accordance with rules to be adopted by the commission, thereby providing certainty regarding such compliance to all persons who have an interest in such transactions, including insureds, regulators, surplus lines licensees, other insurance producers, and surplus lines insurers.
5. To establish a clearinghouse for receipt and dissemination of premium tax and clearinghouse transaction data related to nonadmitted insurance of multistate risks, in accordance with rules to be adopted by the commission.
6. To improve coordination of regulatory resources and expertise between state insurance departments and other state agencies, as well as state surplus lines stamping offices, with respect to nonadmitted insurance.
7. To adopt uniform rules to provide for premium tax payment, reporting, allocation, data collection and dissemination for nonadmitted insurance of multistate risks and single-state risks, in accordance with rules to be adopted by the commission, thereby promoting the overall efficiency of the nonadmitted insurance market.
8. To adopt uniform mandatory rules with respect to regulatory compliance requirements for:
  - a. Foreign insurer eligibility requirements.
  - b. Surplus lines policyholder notices.
9. To establish the surplus lines insurance multistate compliance compact commission.
10. To coordinate reporting of clearinghouse transaction data on nonadmitted insurance of multistate risks among compacting states and contracting states.
11. To perform these and such other related functions as may be consistent with the purposes of the surplus lines insurance multistate compliance compact.

## **ARTICLE II - DEFINITIONS**

For purposes of this compact, the following definitions apply:

1. "Admitted insurer" means an insurer that is licensed, or authorized, to transact the business of insurance under the law of the home state; for purposes of this compact, "admitted insurer" does not include a domestic surplus lines insurer as may be defined by applicable state law.
2. "Affiliate" means with respect to an insured, any entity that controls, is controlled by, or is under common control with the insured.

3. "Allocation formula" means the uniform methods promulgated by the commission by which insured risk exposures will be apportioned to each state for the purpose of calculating premium taxes due.
4. "Bylaws" means those bylaws established by the commission for its governance, or for directing or controlling the commission's actions or conduct.
5. "Clearinghouse" means the commission's operations involving the acceptance, processing, and dissemination, among the compacting states, contracting states, surplus lines licensees, insureds and other persons, of premium tax and clearinghouse transaction data for nonadmitted insurance of multistate risks, in accordance with this compact and rules to be adopted by the commission.
6. "Clearinghouse transaction data" means the information regarding nonadmitted insurance of multistate risks required to be reported, accepted, collected, processed, and disseminated by surplus lines licensees for surplus lines insurance and insureds for independently procured insurance under this compact and rules to be adopted by the commission. Clearinghouse transaction data includes information related to single-state risks if a state elects to have the clearinghouse collect taxes on single-state risks for such state.
7. "Commission" means the surplus lines insurance multistate compliance compact commission established by this compact.
8. "Commissioner" means the chief insurance regulatory official of a state, including commissioner, superintendent, director, or administrator or their designees.
9. "Compacting state" means any state that has enacted this compact legislation and which has not withdrawn pursuant to article XIV, subsection 1, or been terminated pursuant to article XIV, subsection 2.
10. "Contracting state" means any state that has not enacted this compact legislation but has entered a written contract with the commission to utilize the services of and fully participate in the clearinghouse.
11. "Control", an entity has "control" over another entity if:
  - a. The entity directly or indirectly or acting through one or more other persons owns, controls, or has the power to vote twenty-five percent or more of any class of voting securities of the other entity; or
  - b. The entity controls in any manner the election of a majority of the directors or trustees of the other entity.
12. "Home state":
  - a. Except as provided in subdivision b, the term "home state" means, with respect to an insured:
    - (1) The state in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or

- (2) If one hundred percent of the insured risk is located out of the state referred to in paragraph 1, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.
- b. If more than one insured from an affiliated group are named insureds on a single nonadmitted insurance contract, the term "home state" means the home state, as determined pursuant to subdivision a, of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.
13. "Independently procured insurance" means insurance procured by an insured directly from a surplus lines insurer or other nonadmitted insurer as permitted by the laws of the home state.
14. "Insurer eligibility requirements" means the criteria, forms, and procedures established to qualify as a surplus lines insurer under the law of the home state provided that such criteria, forms, and procedures are consistent with the express provisions of the Nonadmitted and Reinsurance Reform Act on and after July 21, 2011.
15. "Member" means the person or persons chosen by a compacting state as its representative or representatives to the commission provided that each compacting state is limited to one vote.
16. "Multistate risk" means a risk with insured exposures in more than one state.
17. "Nonadmitted insurance" means surplus lines insurance and independently procured insurance.
18. "Nonadmitted insurer" means an insurer that is not authorized or admitted to transact the business of insurance under the law of the home state.
19. "Nonadmitted and Reinsurance Reform Act" means the Nonadmitted and Reinsurance Reform Act of 2010 [Pub. L. 111-203; 124 Stat.1589; 15 U.S.C. 8201 et seq.] which is subtitle B of title V of the Dodd-Frank Wall Street Reform and Consumer Protection Act.
20. "Noncompacting state" means any state that has not adopted this compact.
21. "Policyholder notice" means the disclosure notice or stamp that is required to be furnished to the applicant or policyholder in connection with a surplus lines insurance placement.
22. "Premium tax" means with respect to nonadmitted insurance, any tax, fee, assessment, or other charge imposed by a government entity directly or indirectly based on any payment made as consideration for such insurance, including premium deposits, assessments, registration fees, and any other compensation given in consideration for a contract of insurance.
23. "Principal place of business" means with respect to determining the home state of the insured, the state where the insured maintains its headquarters and where the insured's high-level officers direct, control, and coordinate the business activities of the insured.

24. "Purchasing group" means any group formed pursuant to the Liability Risk Retention Act which has as one of its purposes the purchase of liability insurance on a group basis, purchases such insurance only for its group members and only to cover their similar or related liability exposure and is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations and is domiciled in any state.
25. "Rule" means a statement of general or particular applicability and future effect promulgated by the commission designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of the commission which shall have the force and effect of law in the compacting states.
26. "Single-state risk" means a risk with insured exposures in only one state.
27. "State" means any state, district, or territory of the United States of America.
28. "State transaction documentation" means the information required under the laws of the home state to be filed by surplus lines licensees in order to report surplus lines insurance and verify compliance with surplus lines laws, and by insureds in order to report independently procured insurance.
29. "Surplus lines insurance" means insurance procured by a surplus lines licensee from a surplus lines insurer or other nonadmitted insurer as permitted under the law of the home state; for purposes of this compact, "surplus lines insurance" also means excess lines insurance as may be defined by applicable state law.
30. "Surplus lines insurer" means a nonadmitted insurer eligible under the law of the home state to accept business from a surplus lines licensee; for purposes of this compact, "surplus lines insurer" also means an insurer that is permitted to write surplus lines insurance under the laws of the state where such insurer is domiciled.
31. "Surplus lines licensee" means an individual, firm, or corporation licensed under the law of the home state to place surplus lines insurance.

### **ARTICLE III - ESTABLISHMENT OF THE COMMISSION AND VENUE**

1. The compacting states hereby create and establish a joint public agency known as the surplus lines insurance multistate compliance compact commission.
2. Pursuant to article IV, the commission may adopt mandatory rules that establish exclusive home state authority regarding nonadmitted insurance of multistate risks, allocation formulas, clearinghouse transaction data, a clearinghouse for receipt and distribution of allocated premium tax and clearinghouse transaction data, and uniform rulemaking procedures and rules for the purpose of financing, administering, operating, and enforcing compliance with the provisions of this compact, its bylaws, and rules.
3. Pursuant to article IV, the commission may adopt mandatory rules establishing foreign insurer eligibility requirements and a concise and objective policyholder notice regarding the nature of a surplus lines placement.

4. The commission is a body corporate and politic, and an instrumentality of the compacting states.
5. The commission is solely responsible for its liabilities except as otherwise specifically provided in this compact.
6. 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.

#### **ARTICLE IV - AUTHORITY TO ESTABLISH MANDATORY RULES**

The commission shall adopt mandatory rules that establish:

1. Allocation formulas for each type of nonadmitted insurance coverage, which allocation formulas must be used by each compacting state and contracting state in acquiring premium tax and clearinghouse transaction data from surplus lines licensees and insureds for reporting to the clearinghouse created by the compact commission. Such allocation formulas will be established with input from surplus lines licensees and be based upon readily available data with simplicity and uniformity for the surplus lines licensee as a material consideration.
2. Uniform clearinghouse transaction data reporting requirements for all information reported to the clearinghouse.
3. Methods by which compacting states and contracting states require surplus lines licensees and insureds to pay premium tax and to report clearinghouse transaction data to the clearinghouse, including processing clearinghouse transaction data through state stamping and service offices, state insurance departments, or other state-designated agencies or entities.
4. That nonadmitted insurance of multistate risks must be subject to all of the regulatory compliance requirements of the home state exclusively. Home state regulatory compliance requirements applicable to surplus lines insurance must include persons required to be licensed to sell, solicit, or negotiate surplus lines insurance; insurer eligibility requirements or other approved nonadmitted insurer requirements; diligent search; and state transaction documentation and clearinghouse transaction data regarding the payment of premium tax as set forth in this compact and rules to be adopted by the commission. Home state regulatory compliance requirements applicable to independently procured insurance placements must include providing state transaction documentation and clearinghouse transaction data regarding the payment of premium tax as set forth in this compact and rules to be adopted by the commission.
5. That each compacting state and contracting state may charge its own rate of taxation on the premium allocated to such state based on the applicable allocation formula provided that the state establishes one single rate of taxation applicable to all nonadmitted insurance transactions and no other tax, fee assessment, or other charge by any governmental or quasi-governmental agency be permitted. Notwithstanding the foregoing, stamping office fees may be charged as a separate, additional cost unless such fees are incorporated into a state's single rate of taxation.

6. That any change in the rate of taxation by any compacting state or contracting state be restricted to changes made prospectively on not less than ninety days' advance notice to the compact commission.
7. That each compacting state and contracting state shall require premium tax payments either annually, semiannually, or quarterly utilizing one or more of the following dates only: March first, June first, September first, and December first.
8. That each compacting state and contracting state prohibit any other state agency or political subdivision from requiring surplus lines licensees to provide clearinghouse transaction data and state transaction documentation other than to the insurance department or tax officials of the home state or one single designated agent thereof.
9. The obligation of the home state by itself, through a designated agent, surplus lines stamping, or service office, to collect clearinghouse transaction data from surplus lines licensees and from insureds for independently procured insurance, where applicable, for reporting to the clearinghouse.
10. A method for the clearinghouse to periodically report to compacting states, contracting states, surplus lines licensees, and insureds who independently procure insurance all premium taxes owed to each of the compacting states and contracting states, the dates upon which payment of such premium taxes are due, and a method to pay them through the clearinghouse.
11. That each surplus lines licensee is required to be licensed only in the home state of each insured for whom surplus lines insurance has been procured.
12. That a policy considered to be surplus lines insurance in the insured's home state shall be considered surplus lines insurance in all compacting states and contracting states, and taxed as a surplus lines transaction in all states to which a portion of the risk is allocated. Each compacting state and contracting state shall require each surplus lines licensee to pay to every other compacting state and contracting state premium taxes on each multistate risk through the clearinghouse at such tax rate charged on surplus lines transactions in such other compacting states and contracting states on the portion of the risk in each such compacting state and contracting state as determined by the applicable uniform allocation formula adopted by the commission. A policy considered to be independently procured insurance in the insured's home state must be considered independently procured insurance in all compacting states and contracting states. Each compacting state and contracting state shall require the insured to pay every other compacting state and contracting state the independently procured insurance premium tax on each multistate risk through the clearinghouse pursuant to the uniform allocation formula adopted by the commission.
13. Uniform foreign insurer eligibility requirements as authorized by the Nonadmitted and Reinsurance Reform Act.
14. A uniform policyholder notice.
15. Uniform treatment of purchasing group surplus lines insurance placements.



## **ARTICLE V - POWERS OF THE COMMISSION**

The commission may:

1. Promulgate rules and operating procedures, pursuant to article VIII of this compact, which must have the force and effect of law and must be binding in the compacting states to the extent and in the manner provided in this compact;
2. Bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any state insurance department to sue or be sued under applicable law may not be affected;
3. Issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence, provided, however, the commission is not empowered to demand or subpoena records or data from nonadmitted insurers;
4. Establish and maintain offices, including the creation of a clearinghouse for the receipt of premium tax and clearinghouse transaction data regarding nonadmitted insurance of multistate risks, single-state risks for states that elect to require surplus lines licensees to pay premium tax on single-state risks through the clearinghouse, and tax reporting forms;
5. Purchase and maintain insurance and bonds;
6. Borrow, accept, or contract for services of personnel, including employees of a compacting state or stamping office, pursuant to an open, transparent, objective, competitive process and procedure adopted by the commission;
7. Hire employees, professionals, or specialists, and elect or appoint officers, and to fix their compensation, define their duties and give them appropriate authority to carry out the purposes of the compact, and determine their qualifications, pursuant to an open, transparent, objective, competitive process and procedure adopted by the commission; and to establish the commission's personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel, and other related personnel matters;
8. 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 avoid any appearance of impropriety or conflict of interest or both;
9. Lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use, any property, real, personal, or mixed, provided that at all times the commission shall avoid any appearance of impropriety or conflict of interest or both;
10. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;
11. Provide for tax audit rules and procedures for the compacting states with respect to the allocation of premium taxes, including:
  - a. Minimum audit standards, including sampling methods;

- b. Review of internal controls;
  - c. Cooperation and sharing of audit responsibilities between compacting states;
  - d. Handling of refunds or credits due to overpayments or improper allocation of premium taxes;
  - e. Taxpayer records to be reviewed, including a minimum retention period; and
  - f. Authority of compacting states to review, challenge, or reaudit taxpayer records;
12. Enforce compliance by compacting states and contracting states with rules and bylaws pursuant to the authority set forth in article XIV;
  13. Provide for dispute resolution among compacting states and contracting states;
  14. Advise compacting states and contracting states on tax-related issues relating to insurers, insureds, surplus lines licensees, agents, or brokers domiciled or doing business in noncompacting states, consistent with the purposes of this compact;
  15. Make available advice and training to those personnel in state stamping offices, state insurance departments, or other state departments for recordkeeping, tax compliance, and tax allocations; and to be a resource for state insurance departments and other state departments;
  16. Establish a budget and make expenditures;
  17. Borrow money;
  18. Appoint and oversee committees, including advisory committees comprised of members, state insurance regulators, state legislators or their representatives, insurance industry and consumer representatives, and such other interested persons as may be designated in this compact and the bylaws;
  19. Establish an executive committee of not less than seven nor more than fifteen representatives, which must include officers elected by the commission and such other representatives as provided for herein and determined by the bylaws. Representatives of the executive committee shall serve a one-year term. Representatives of the executive committee must be entitled to one vote each. The executive committee must have the power to act on behalf of the commission, with the exception of rulemaking, during periods when the commission is not in session. The executive committee shall oversee the day-to-day activities of the administration of the compact, including the activities of the operations committee created under this article and compliance and enforcement of the provisions of the compact, its bylaws, and rules, and such other duties as provided herein and as deemed necessary;
  20. Establish an operations committee of not less than seven and not more than fifteen representatives to provide analysis, advice, determinations, and recommendations regarding technology, software, and systems integration to

be acquired by the commission and to provide analysis, advice, determinations, and recommendations regarding the establishment of mandatory rules to be adopted by the commission;

21. Enter contracts with contracting states so that contracting states can utilize the services of and fully participate in the clearinghouse subject to the terms and conditions set forth in such contracts;
22. Adopt and use a corporate seal; and
23. Perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of the business of insurance.

#### **ARTICLE VI - ORGANIZATION OF THE COMMISSION**

1. a. Each compacting state must have and is limited to one member. Each state shall determine the qualifications and the method by which it selects a member and set forth the selection process in the enabling provision of the legislation that enacts this compact. In the absence of such a provision, the member must be appointed by the governor of such compacting state. Any member may be removed or suspended from office as provided by the law of the state from which that member must be appointed. Any vacancy occurring in the commission must be filled in accordance with the laws of the compacting state wherein the vacancy exists.
- b. Each member is entitled to one vote and must have an opportunity to participate in the governance of the commission in accordance with the bylaws.
- c. The commission, by a majority vote of the members, shall prescribe bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of the compact, including:
  - (1) Establishing the fiscal year of the commission;
  - (2) Providing reasonable procedures for holding meetings of the commission, the executive committee, and the operations committee;
  - (3) Providing reasonable standards and procedures for the establishment and meetings of committees, and governing any general or specific delegation of any authority or function of the commission;
  - (4) Providing reasonable procedures for calling and conducting meetings of the commission which consist of a majority of commission members, ensuring reasonable advance notice of each such meeting and providing for the right of citizens to attend each such meeting with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and insurers' and surplus lines licensees' proprietary information, including trade secrets. The commission may meet in camera only after a majority of the entire membership votes to close a meeting in toto or in part. As soon as practicable, the commission shall make public a copy of the vote to close the meeting revealing the vote of each member with no proxy votes allowed, and votes taken during such meeting;



director shall hire and supervise such other persons as may be authorized by the commission.

3. a. An operations committee is established. All actions of the operations committee are subject to the review and oversight of the commission and the executive committee and must be approved by the commission. The executive committee must accept the determinations and recommendations of the operations committee unless good cause is shown why such determinations and recommendations should not be approved. Any disputes as to whether good cause exists to reject any determination or recommendation of the operations committee must be resolved by the majority vote of the commission.

The operations committee may not have more than fifteen representatives or one for each state if there are fewer than fifteen compacting states, who shall serve for a term and must be established as set forth in the bylaws.

The operations committee must have responsibility for:

- (1) Evaluating technology requirements for the clearinghouse, assessing existing systems used by state regulatory agencies and state stamping offices to maximize the efficiency and successful integration of the clearinghouse technology systems with state and state stamping office technology platforms, and to minimize costs to the states, state stamping offices, and the clearinghouse.
  - (2) Making recommendations to the executive committee based on its analysis and determination of the clearinghouse technology requirements and compatibility with existing state and state stamping office systems.
  - (3) Evaluating the most suitable proposals for adoption as mandatory rules, assessing such proposals for ease of integration by states, and likelihood of successful implementation and to report to the executive committee its determinations and recommendations.
  - (4) Such other duties and responsibilities as are delegated to it by the bylaws, the executive committee, or the commission.
- b. All representatives of the operations committee must be individuals who have extensive experience or employment or both in the surplus lines insurance business, including executives and attorneys employed by surplus lines insurers, surplus lines licensees, law firms, state insurance departments or state stamping offices or any combination of these entities. Operations committee representatives from compacting states, which utilize the services of a state stamping office, shall appoint the chief operating officer or a senior manager of the state stamping office to the operations committee.
4. a. A legislative committee composed of state legislators or their designees is established to monitor the operations of and make recommendations to, the commission, including the executive committee, provided that the manner of selection and term of any legislative committee member must be as set forth in the bylaws. Prior to the adoption by the commission of

- any uniform standard, revision to the bylaws, annual budget, or other significant matter as may be provided in the bylaws, the executive committee shall consult with and report to the legislative committee.
- b. The commission may establish additional advisory committees as its bylaws may provide for the carrying out of its functions.
5. The commission shall maintain its corporate books and records in accordance with the bylaws.
6. a. The members, officers, executive director, employees, and representatives of the commission, the executive committee, and any other committee of the commission must be 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; provided that nothing in this subdivision may be construed to protect any such person from suit or liability or both 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, the executive committee or any other committee 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 that person's 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, executive committee, or any other committee 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.

#### **ARTICLE VII - MEETINGS AND ACTS OF THE COMMISSION**

1. The commission shall meet and take such actions as are consistent with the provisions of this compact and the bylaws.
2. Each member of the commission may cast a vote to which that compacting state is entitled and may participate in the business and affairs of the commission. A member shall vote in person or by such other means as

- provided in the bylaws. The bylaws may provide for members' participation in meetings by telephone or other means of communication.
3. The commission shall meet at least once during each calendar year. Additional meetings must be held as set forth in the bylaws.
  4. Public notice must be given of all meetings and all meetings must be open to the public, except as set forth in the rules or otherwise provided in the compact.
  5. The commission shall promulgate rules concerning its meetings consistent with the principles contained in the Government in the Sunshine Act [5 U.S.C. 552b], as may be amended.
  6. The commission and its committees may close a meeting, or portion thereof, where it determines by majority vote that an open meeting would be likely to:
    - a. Relate solely to the commission's internal personnel practices and procedures;
    - b. Disclose matters specifically exempted from disclosure by federal and state statute;
    - c. Disclose trade secrets or commercial or financial information that is privileged or confidential;
    - d. Involve accusing a person of a crime, or formally censuring a person;
    - e. Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
    - f. Disclose investigative records compiled for law enforcement purposes; or
    - g. Specifically relate to the commission's issuance of a subpoena, or its participation in a civil action or other legal proceeding.
  7. For a meeting, or portion of a meeting, closed pursuant to this provision, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exemptive provision. The commission shall keep minutes which must fully and clearly describe all matters discussed in a meeting and must provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action must be identified in such minutes. All minutes and documents of a closed meeting must remain under seal, subject to release by a majority vote of the commission.

#### **ARTICLE VIII - RULES AND OPERATING PROCEDURES - RULEMAKING FUNCTIONS OF THE COMMISSION**

1. The commission shall adopt reasonable rules in order to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this compact, or the powers granted hereunder, then such an action by the commission is invalid and has no force or effect.

2. Rules must be made pursuant to a rulemaking process that substantially conforms to the Model State Administrative Procedure Act of 1981, Uniform Laws Annotated, vol. 15, p. 1 (2000) as amended, as may be appropriate to the operations of the commission.
3. All rules and amendments, thereto, must become effective as of the date specified in each rule, operating procedure, or amendment.
4. Not later than thirty days after a rule is adopted, any person may file a petition for judicial review of the rule, 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 commission consistent with applicable law and may not find the rule to be unlawful if the rule represents a reasonable exercise of the commission's authority.

#### **ARTICLE IX - COMMISSION RECORDS AND ENFORCEMENT**

1. The commission shall adopt rules establishing conditions and procedures for public inspection and copying of its information and official records, except such information and records involving the privacy of individuals, insurers, insureds, or surplus lines licensee trade secrets. State transaction documentation and clearinghouse transaction data collected by the clearinghouse must be used for only those purposes expressed in or reasonably implied under the provisions of this compact, and the commission shall afford this data the broadest protections as permitted by any applicable law for proprietary information, trade secrets, or personal data. The commission may adopt additional rules under which it may make available to federal and state agencies, including law enforcement agencies, records and information otherwise exempt from disclosure, and may enter agreements with such agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.
2. Except as to privileged records, data, and information, the laws of any compacting state pertaining to confidentiality or nondisclosure may not relieve any compacting state member of the duty to disclose any relevant records, data, or information to the commission, provided that disclosure to the commission may not be deemed to waive or otherwise affect any confidentiality requirement, and further provided that, except as otherwise expressly provided in this section, the commission may not be subject to the compacting state's laws pertaining to confidentiality and nondisclosure with respect to records, data, and information in its possession. Confidential information of the commission must remain confidential after such information is provided to any member, and the commission shall maintain the confidentiality of any information provided by a member that is confidential under that member's state law.
3. The commission shall monitor compacting states for compliance with duly adopted bylaws and rules. The commission shall notify any noncomplying compacting state in writing of its noncompliance with commission bylaws or rules. If a noncomplying compacting state fails to remedy its noncompliance within the time specified in the notice of noncompliance, the compacting state must be deemed to be in default as set forth in article XIV.



### **ARTICLE X - DISPUTE RESOLUTION**

1. Before a member may bring an action in a court of competent jurisdiction for violation of any provision, standard, or requirement of the compact, the commission shall attempt, upon the request of a member, to resolve any disputes or other issues that are subject to this compact and which may arise between two or more compacting states, contracting states, or noncompacting states, and the commission shall promulgate a rule providing alternative dispute resolution procedures for such disputes.
2. The commission shall also provide alternative dispute resolution procedures to resolve any disputes between insureds or surplus lines licensees concerning a tax calculation or allocation or related issues which are the subject of this compact.
3. Any alternative dispute resolution procedures must be utilized in circumstances where a dispute arises as to which state constitutes the home state.

### **ARTICLE XI - REVIEW OF COMMISSION DECISIONS**

1. Except as necessary for adopting rules to fulfill the purposes of this compact, the commission may not otherwise regulate insurance in the compacting states.
2. Not later than thirty days after the commission has given notice of any rule or allocation formula, any third-party filer or compacting state may appeal the determination to a review panel appointed by the commission. The commission shall adopt rules to establish procedures for appointing such review panels and provide for notice and hearing. An allegation that the commission, in making compliance or tax determinations acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to judicial review in accordance with subsection 6 of article III.
3. The commission may monitor, review, and reconsider commission decisions upon a finding that the determinations or allocations do not meet the relevant rule. Where appropriate, the commission may withdraw or modify its determination or allocation after proper notice and hearing, subject to the appeal process in subsection 2.

### **ARTICLE XII - FINANCE**

1. The commission shall pay or provide for the payment of the reasonable expenses of its establishment and organization. To fund the cost of its initial operations, the commission may accept contributions, grants, and other forms of funding from the state stamping offices, compacting states, and other sources.
2. The commission shall collect a fee payable by the insured directly or through a surplus lines licensee on each transaction processed through the compact clearinghouse, to cover the cost of the operations and activities of the commission and its staff in a total amount sufficient to cover the commission's annual budget.

3. The commission's budget for a fiscal year may not be approved until it has been subject to notice and comment as set forth in article VIII.
4. The commission must be regarded as performing essential governmental functions in exercising such powers and functions and in carrying out the provisions of this compact and of any law relating thereto, and may not be required to pay any taxes or assessments of any character, levied by any state or political subdivision thereof, upon any of the property used by it for such purposes, or any income or revenue therefrom, including any profit from a sale or exchange.
5. The commission shall keep complete and accurate accounts of all its internal receipts, including grants and donations, and disbursements for all funds under its control. The internal financial accounts of the commission must be subject to the accounting procedures established under its bylaws. The financial accounts and reports, including the system of internal controls and procedures of the commission, must be audited annually by an independent certified public accountant. Upon the determination of the commission, but not less frequently than every three years, the review of the independent auditor must include a management and performance audit of the commission. The commission shall make an annual report to the governor and legislature of the compacting states, which must include a report of the independent audit. The commission's internal accounts may not be confidential and such materials may be shared with the commissioner, the controller, or the stamping office of any compacting state upon request, provided, however, that any workpapers related to any internal or independent audit and any information regarding the privacy of individuals, and licensees' and insurers' proprietary information, including trade secrets, must remain confidential.
6. A compacting state may not have any claim to or ownership of any property held by or vested in the commission or to any commission funds held pursuant to the provisions of this compact.
7. The commission may not make any political contributions to candidates for elected office, elected officials, political parties, or political action committees. The commission may not engage in lobbying except with respect to changes to this compact.

### **ARTICLE XIII - COMPACTING STATES, EFFECTIVE DATE, AND AMENDMENT**

1. Any state is eligible to become a compacting state.
2. The compact must become effective and binding upon legislative enactment of the compact into law by two compacting states, provided the commission must become effective for purposes of adopting rules, and creating the clearinghouse when there are a total of ten compacting states and contracting states or, alternatively, when there are compacting states and contracting states representing greater than forty percent of the surplus lines insurance premium volume based on records of the percentage of surplus lines insurance premium set forth in subsection 4. Thereafter, it must become effective and binding as to any other compacting state upon enactment of the compact into law by that state. Notwithstanding the foregoing, the clearinghouse operations and the duty to report clearinghouse transaction data must begin on the first January first or July first following the first anniversary of the commission's effective date. For states that join the compact subsequent to the effective date, a start date for reporting

clearinghouse transaction data must be set by the commission provided surplus lines licensees and all other interested parties receive not less than ninety days' advance notice.

3. Amendments to the compact may be proposed by the commission for enactment by the compacting states. An amendment may not become effective and binding upon the commission and the compacting states unless and until all compacting states enact the amendment into law.
4. Surplus lines insurance premiums by state:

<u>Premiums Based State</u>	<u>Share of Total on Taxes Paid</u>	<u>Premiums</u>
<u>Alabama</u>	<u>\$445,746,000</u>	<u>1.47%</u>
<u>Alaska</u>	<u>89,453,519</u>	<u>0.29%</u>
<u>Arizona</u>	<u>663,703,267</u>	<u>2.18%</u>
<u>Arkansas</u>	<u>201,859,750</u>	<u>0.66%</u>
<u>California</u>	<u>5,622,450,467</u>	<u>18.49%</u>
<u>Colorado</u>	<u>543,781,333</u>	<u>1.79%</u>
<u>Connecticut</u>	<u>329,358,800</u>	<u>1.08%</u>
<u>Delaware</u>	<u>92,835,950</u>	<u>0.31%</u>
<u>Florida</u>	<u>2,660,908,760</u>	<u>8.75%</u>
<u>Georgia</u>	<u>895,643,150</u>	<u>2.95%</u>
<u>Hawaii</u>	<u>232,951,489</u>	<u>0.77%</u>
<u>Idaho</u>	<u>74,202,255</u>	<u>0.24%</u>
<u>Illinois</u>	<u>1,016,504,629</u>	<u>3.34%</u>
<u>Indiana</u>	<u>412,265,320</u>	<u>1.36%</u>
<u>Iowa</u>	<u>135,130,933</u>	<u>0.44%</u>
<u>Kansas</u>	<u>160,279,300</u>	<u>0.53%</u>
<u>Kentucky</u>	<u>167,996,133</u>	<u>0.55%</u>
<u>Louisiana</u>	<u>853,173,280</u>	<u>2.81%</u>
<u>Maine</u>	<u>60,111,200</u>	<u>0.20%</u>
<u>Maryland</u>	<u>434,887,600</u>	<u>1.43%</u>
<u>Massachusetts</u>	<u>708,640,225</u>	<u>2.33%</u>
<u>Michigan</u>	<u>703,357,040</u>	<u>2.31%</u>
<u>Minnesota</u>	<u>393,128,400</u>	<u>1.29%</u>
<u>Mississippi</u>	<u>263,313,175</u>	<u>0.87%</u>
<u>Missouri</u>	<u>404,489,860</u>	<u>1.33%</u>
<u>Montana</u>	<u>64,692,873</u>	<u>0.21%</u>
<u>Nebraska</u>	<u>92,141,167</u>	<u>0.30%</u>
<u>Nevada</u>	<u>354,271,514</u>	<u>1.17%</u>
<u>New Hampshire</u>	<u>102,946,250</u>	<u>0.34%</u>
<u>New Jersey</u>	<u>1,087,994,033</u>	<u>3.58%</u>
<u>New Mexico</u>	<u>67,608,458</u>	<u>0.22%</u>
<u>New York</u>	<u>2,768,618,083</u>	<u>9.11%</u>
<u>North Carolina</u>	<u>514,965,060</u>	<u>1.69%</u>
<u>North Dakota</u>	<u>36,223,943</u>	<u>0.12%</u>
<u>Ohio</u>	<u>342,000,000</u>	<u>1.12%</u>
<u>Oklahoma</u>	<u>319,526,400</u>	<u>1.05%</u>
<u>Oregon</u>	<u>312,702,150</u>	<u>1.03%</u>
<u>Pennsylvania</u>	<u>780,666,667</u>	<u>2.57%</u>
<u>Rhode Island</u>	<u>71,794,067</u>	<u>0.24%</u>
<u>South Carolina</u>	<u>412,489,825</u>	<u>1.36%</u>
<u>South Dakota</u>	<u>38,702,120</u>	<u>0.13%</u>

<u>Tennessee</u>	<u>451,775,240</u>	<u>1.49%</u>
<u>Texas</u>	<u>3,059,170,454</u>	<u>10.06%</u>
<u>Utah</u>	<u>142,593,412</u>	<u>0.47%</u>
<u>Vermont</u>	<u>41,919,433</u>	<u>0.14%</u>
<u>Virginia</u>	<u>611,530,667</u>	<u>2.01%</u>
<u>Washington</u>	<u>739,932,050</u>	<u>2.43%</u>
<u>West Virginia</u>	<u>130,476,250</u>	<u>0.43%</u>
<u>Wisconsin</u>	<u>248,758,333</u>	<u>0.82%</u>
<u>Wyoming</u>	<u>40,526,967</u>	<u>0.13%</u>
<u>Total</u>	<u>\$30,400,197,251</u>	<u>100.00%</u>

This data is 2005 calendar year data excerpted from a study dated February 27, 2007, by Mackin & Company.

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

1.
  - a. Once effective, the compact must continue in force and remain binding upon each and every compacting state, provided that a compacting state may withdraw from the compact, "withdrawing state", by enacting a statute specifically repealing the statute which enacted the compact into law.
  - b. The effective date of withdrawal is the effective date of the repealing statute. However, the withdrawal may not apply to any tax or compliance determinations approved on the date the repealing statute becomes effective, except by mutual agreement of the commission and the withdrawing state unless the approval is rescinded by the commission.
  - c. The member of the withdrawing state shall immediately notify the executive committee of the commission in writing upon the introduction of legislation repealing this compact in the withdrawing state.
  - d. The commission shall notify the other compacting states of the introduction of such legislation within ten days after its receipt of notice thereof.
  - e. The withdrawing state is responsible for all obligations, duties, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal. To the extent those obligations may have been released or relinquished by mutual agreement of the commission and the withdrawing state, the commission's determinations prior to the effective date of withdrawal must continue to be effective and be given full force and effect in the withdrawing state, unless formally rescinded by the commission.
  - f. Reinstatement following withdrawal of any compacting state must occur upon the effective date of the withdrawing state reenacting the compact.
2.
  - a. If the commission determines that any compacting state has at any time defaulted, "defaulting state", in the performance of any of its obligations or responsibilities under this compact, the bylaws or duly promulgated rules then after notice and hearing as set forth in the bylaws, all rights, privileges, and benefits conferred by this compact on the defaulting state must be suspended from the effective date of default as fixed by the commission. The grounds for default include failure of a compacting state to perform its obligations or responsibilities and any other grounds designated in commission rules. The commission shall immediately notify

- the defaulting state in writing of the defaulting state's suspension pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state shall cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state must be terminated from the compact and all rights, privileges, and benefits conferred by this compact must be terminated from the effective date of termination.
- b. Decisions of the commission that are issued on the effective date of termination must remain in force in the defaulting state in the same manner as if the defaulting state had withdrawn voluntarily pursuant to subsection 1.
  - c. Reinstatement following termination of any compacting state requires a reenactment of the compact.
3. a. The compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to one compacting state.
  - b. Upon the dissolution of this compact, the compact becomes null and void and must have no further force or effect, and the business and affairs of the commission must be wound up and any surplus funds shall be distributed in accordance with the rules and bylaws.

#### **ARTICLE XV - SEVERABILITY AND CONSTRUCTION**

1. The provisions of this compact are 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 this compact must be liberally construed to effectuate its purposes.
3. Throughout this compact the use of the singular includes the plural and vice versa.
4. Any headings and captions of articles, subsections, and subdivisions used in this compact are for convenience only and must be ignored in construing the substantive provisions of this compact.

#### **ARTICLE XVI - BINDING EFFECT OF COMPACT AND OTHER LAWS**

1. a. Nothing herein prevents the enforcement of any other law of a compacting state except as provided in subdivision b.
- b. Decisions of the commission, and any rules, and any other requirements of the commission must constitute the exclusive rule, or determination applicable to the compacting states. Any law or regulation regarding nonadmitted insurance of multistate risks that is contrary to rules of the commission is preempted with respect to the following:
  - (1) Clearinghouse transaction data reporting requirements;
  - (2) Allocation formula;

- (3) Clearinghouse transaction data collection requirements;
  - (4) Premium tax payment timeframes and rules concerning dissemination of data among the compacting states for nonadmitted insurance of multistate risks and single-state risks;
  - (5) Exclusive compliance with surplus lines law of the home state of the insured;
  - (6) Rules for reporting to a clearinghouse for receipt and distribution of clearinghouse transaction data related to nonadmitted insurance of multistate risks;
  - (7) Uniform foreign insurers eligibility requirements;
  - (8) Uniform policyholder notice; and
  - (9) Uniform treatment of purchasing groups procuring nonadmitted insurance.
- c. Except as stated in subdivision b, any rule, uniform standard, or other requirement of the commission must constitute the exclusive provision that a commissioner may apply to compliance or tax determinations. Notwithstanding the foregoing, no action taken by the commission may abrogate or restrict: the access of any person to state courts; the availability of alternative dispute resolution under article X; remedies available under state law related to breach of contract, tort, or other laws not specifically directed to compliance or tax determinations; state law relating to the construction of insurance contracts; or the authority of the attorney general of the state, including maintaining any actions or proceedings, as authorized by law.
2. a. All lawful actions of the commission, including all rules adopted by the commission, are binding upon the compacting states, except as provided herein.
- b. All agreements between the commission and the compacting states are binding in accordance with their terms.
- c. Upon the request of a party to a conflict over the meaning or interpretation of commission actions, and upon a majority vote of the compacting states, the commission may issue advisory opinions regarding the meaning or interpretation in dispute. This provision may be implemented by rule at the discretion of the commission.
- d. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by that provision upon the commission must be ineffective as to that state and those obligations, duties, powers, or jurisdiction must remain in the compacting state and must be exercised by the agency thereof to which those obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

**SECTION 13. EMERGENCY.** This Act is declared to be an emergency measure.

## CHAPTER 224

### HOUSE BILL NO. 1183

(Representatives Keiser, N. Johnson, Gruchalla)  
(Senators Flakoll, Wardner, Warner)

AN ACT to create and enact a new section to chapter 26.1-47 of the North Dakota Century Code, relating to preferred provider arrangements with dental service providers; and to provide for application.

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

**SECTION 1.** A new section to chapter 26.1-47 of the North Dakota Century Code is created and enacted as follows:

##### **Fees for dental services - Prohibition.**

1. As used in this section, "covered services" means dental care services for which a reimbursement is available under an enrollee's plan or for which a reimbursement would be available but for the application of a deductible, copayment, coinsurance, waiting period, annual or lifetime maximum, or frequency limitation.
2. Except for fees for covered services, a preferred provider arrangement for a dental plan may not directly or indirectly set or otherwise regulate the fees charged by the preferred provider for dental care services.

**SECTION 2. APPLICATION.** Section 1 of this Act applies to all preferred provider arrangements issued on or after the effective date of this Act.

Approved March 28, 2011  
Filed March 28, 2011

## CHAPTER 225

### HOUSE BILL NO. 1126

(Representative Keiser)  
(At the request of the Insurance Commissioner)

AN ACT to create and enact chapter 26.1-54 of the North Dakota Century Code, relating to the creation of an American health benefit exchange; to provide reports to the legislative management; to provide an appropriation; and to provide for application.

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

**SECTION 1.** Chapter 26.1-54 of the North Dakota Century Code is created and enacted as follows:

##### **26.1-54-01. American health benefit exchange.**

To ensure that an American health benefit exchange is created in the state, the commissioner and the department of human services shall:

1. Plan for the implementation of an American health benefit exchange for the state that facilitates the purchase of qualified health benefit plans; provides for the establishment of a small business health options program that is designed to assist qualified small employers in facilitating the enrollment of their employees in qualified health benefit plans offered in the small group market; implements eligibility determination and enrollment of individuals in the state's medical assistance program and the state's children's health insurance program; provides simplification; provides coordination among medical assistance, the children's health insurance program, and the state health insurance exchange; and meets the requirements of the Patient Protection and Affordable Care Act of 2010 [Pub. L. 111-148] as amended by the Health Care and Education Reconciliation Act of 2010 [Pub. L. 111-152]. The legislative assembly may consider establishing one exchange that will provide services to both qualified individuals and qualified small employers;
2. Subject to section 3 of this Act, take all actions necessary to ensure that the exchange is determined, not later than January 1, 2013, by the federal government to be ready to operate not later than January 1, 2014, and that the exchange is operating on or after January 1, 2014;
3. Subject to section 3 of this Act, consider whether to seek federal grant funds for the planning and implementation of the exchange and administer all funds appropriated or made available for the purpose of carrying out the provisions of this chapter;
4. Subject to section 3 of this Act, contract with outside entities as necessary to provide services necessary to implement the exchange; and
5. Collaborate with the information technology department as necessary and appropriate in completing the responsibilities set forth in this section.



**26.1-54-02. Rules.**

The commissioner and the department of human services may adopt rules necessary or desirable to carry out the provisions of this chapter.

**26.1-54-03. Cooperation of state agencies.**

State agencies shall cooperate with the commissioner and the department of human services to ensure the success of the exchange.

**26.1-54-04. Records.**

Notwithstanding any provision of this code making records confidential, the commissioner or the commissioner's designee and the department of human services may receive from and provide to federal and state agencies information gathered in the administration of the exchange, including social security numbers, if the disclosure is necessary for the commissioner, the department of human services, or the receiving entity to perform its duties and responsibilities.

**SECTION 2. APPROPRIATION - FEDERAL FUNDS.** There is appropriated the sum of \$1,000,000, or so much of the sum as may be necessary, out of federal funds available under the Patient Protection and Affordable Care Act of 2010 [Pub. L. 111-148] as amended by the Health Care and Education Reconciliation Act of 2010 [Pub. L. 111-152] to the insurance commissioner for the purpose of planning for implementation of an American health benefit exchange for the state, for the period beginning with the effective date of this Act and ending June 30, 2013.

**SECTION 3. APPLICATION.** In carrying out the requirements of this Act, the insurance commissioner and the department of human services shall provide regular updates to the legislative management during the 2011-12 interim. In determining, planning, and implementing an American health benefit exchange for the state, collectively the commissioner and the department of human services shall submit proposed legislation to the legislative management for consideration at a special legislative session if the state is required by federal law to take any action by January 1, 2013. For any plan, program, or requirement that must be implemented between January 1, 2013, and January 1, 2014, collectively the commissioner and the department of human services shall submit proposed legislation to the legislative management before October 15, 2012.

Approved May 9, 2011  
Filed May 10, 2011

# JUDICIAL BRANCH OF GOVERNMENT

## CHAPTER 226

### HOUSE BILL NO. 1108

(Judiciary Committee)  
(At the request of the Supreme Court)

AN ACT to amend and reenact sections 27-02.1-01, 27-02.1-02, 27-02.1-03, 27-02.1-04, 27-02.1-05, 27-02.1-06, 27-02.1-07, 27-02.1-08, and 27-02.1-09 of the North Dakota Century Code, relating to the temporary court of appeals; to provide an effective date; and to provide an expiration date.

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

**SECTION 1. AMENDMENT.** Section 27-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**27-02.1-01. (Effective through January 1, ~~2012~~2016) Temporary court of appeals established - Jurisdiction - Writ authority - Administration.**

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

**SECTION 2. AMENDMENT.** Section 27-02.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**27-02.1-02. (Effective through January 1, ~~2012~~2016) Number, assignment, and compensation of judges.**

1. The supreme court may provide for the assignment of active or retired district court judges, retired justices of the supreme court, and lawyers, to serve on three-judge panels of the temporary court of appeals if the chief justice certifies to the governor that the supreme court has disposed of two hundred fifty cases in the twelve months preceding September first of any year. Assignments may be made for a time certain, not to exceed one year from the date of assignment, or specifically for one or more cases on the docket of the supreme court.
2. An active or retired district court judge serving on the temporary court of appeals may not be assigned to hear cases in which the judge participated while serving on the district court. An active district court judge may not be assigned to hear cases that originated in the judicial district of the judge.

3. An active district court judge serving on the temporary court of appeals is not entitled to additional compensation, but is entitled to reimbursement for expenses as provided by sections 44-08-04 and 54-06-09.
4. Retired justices of the supreme court, retired district court judges, and lawyers serving as judges on panels of the temporary court of appeals are entitled to receive as compensation for each day of service in the performance of duties pursuant to the assignment an amount equal to five percent of the gross monthly salary as provided for a regularly elected or appointed justice of the supreme court, or one-half of the daily compensation for services of one-half day or less. The compensation must be paid upon certification by the judge that the services were performed for the number of days shown on the certificate and must be paid in the same manner as the salaries of the regularly elected or appointed judges are paid.

**SECTION 3. AMENDMENT.** Section 27-02.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**27-02.1-03. (Effective through January 1, 20122016) Assignment and reassignment of cases - Quorum for decision of cases - Authority in furtherance of jurisdiction.**

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

**SECTION 4. AMENDMENT.** Section 27-02.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**27-02.1-04. (Effective through January 1, 20122016) Administration - Employees and clerical assistance - Court of record - Place of sessions.**

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

**SECTION 5. AMENDMENT.** Section 27-02.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**27-02.1-05. (Effective through January 1, ~~2012~~2016) Chief judge.**

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

**SECTION 6. AMENDMENT.** Section 27-02.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**27-02.1-06. (Effective through January 1, ~~2012~~2016) Review of decisions of panels.**

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

**SECTION 7. AMENDMENT.** Section 27-02.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**27-02.1-07. (Effective through January 1, ~~2012~~2016) Right to appeal not created.**

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

**SECTION 8. AMENDMENT.** Section 27-02.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**27-02.1-08. (Effective through January 1, ~~2012~~2016) Unitary appeal - Filing of appeal - Filing fee.**

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

**SECTION 9. AMENDMENT.** Section 27-02.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**27-02.1-09. (Effective through January 1, ~~2012~~2016) Publication of opinions.**

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

Approved March 28, 2011  
Filed March 28, 2011

## CHAPTER 227

### SENATE BILL NO. 2192

(Senators J. Lee, Dever, Heckaman)  
(Representatives Devlin, Holman, Weisz)

AN ACT to create and enact section 27-20-30.1 of the North Dakota Century Code, relating to the disposition of a child needing continued foster care services after the age of eighteen and under the age of twenty-one; to amend and reenact sections 27-20-03, 27-20-11, 27-20-21, 27-20-22, 27-20-26, 27-20-32.2, and 27-20-36 of the North Dakota Century Code, relating to jurisdiction, venue, contents of petition, summons, right to counsel, reasonable efforts to prevent removal or to unify, and limitations of time on orders of disposition; and to provide an effective date.

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

**SECTION 1. 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; ~~and~~
  - c. Proceedings arising under sections 27-20-39 through 27-20-42-;
  - d. Proceedings arising under section 27-20-30.1; and
  - e. 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.
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.

**SECTION 2. 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, 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 3. AMENDMENT.** Section 27-20-21 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-21. Contents of petition.**

The petition must be verified and may be on information and belief. It must set forth plainly:

1. The facts which bring the child within the jurisdiction of the court, with a statement that it is in the best interest of the child and the public that the proceeding be brought and, if delinquency or unruly conduct is alleged, that the child is in need of treatment or rehabilitation;
2. The name, age, and residence address, if any, of the child on whose behalf the petition is brought;
3. The names and residence addresses, if known to petitioner, of the parents, guardian, or custodian of the child and of the child's spouse, if any. If none of the child's parents, guardian, or custodian resides or can be found within the state, or if their respective places of residence address are unknown, the name of any known adult relative residing within the county, or, if there be none, the known adult relative residing nearest to the location of the court, This subsection does not apply to an action commenced under section 27-20-30.1; and
4. Whether the child is in custody and, if so, the place of the child's detention and the time the child was taken into custody.

**SECTION 4. AMENDMENT.** Section 27-20-22 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-22. Summons.**

1. After the petition has been filed, the court shall fix a time for hearing, except if a petition has been filed under section 27-20-30.1, the court may fix a time for hearing, if necessary. Except as otherwise provided in this subsection, the hearing may not be later than thirty days after the filing of the petition. If the child is in detention, the time for the initial hearing may not be later than fourteen days after the child has been taken into custody. If a child is in shelter care, the hearing on the petition must be held within sixty days of the initial shelter care hearing. The court may extend the time for hearing for good cause shown. The court shall direct the issuance of a summons in proceedings not commenced under section 27-20-30.1 to the parents, guardian, or other custodian, a guardian ad litem, and any other persons as appear to the court to be proper or necessary parties to the proceeding, requiring them to appear before the court at the time fixed to answer the allegations of the petition. The summons must also be directed to the child if the child is fourteen or more years of age or is alleged to be a delinquent or unruly child. A copy of the petition must accompany the summons unless the summons is served by publication in which case the published summons must indicate the general nature of the allegations and where a copy of the petition can be obtained.
2. ~~The~~In a proceeding commenced under section 27-20-30.1, the court may order the child to appear personally. In all other proceedings, the court may endorse upon the summons an order directing the parents, guardian, or other custodian of the child to appear personally at the hearing and directing the person having the physical custody or control of the child to bring the child to the hearing.
3. If it appears from an affidavit filed or from sworn testimony before the court in a proceeding not commenced under section 27-20-30.1 that the conduct, condition, or surroundings of the child are endangering the child's health or welfare or those of others, or that the child may abscond or be removed from the jurisdiction of the court or will not be brought before the court, notwithstanding the service of the summons, the court may endorse upon the summons an order that a law enforcement officer shall serve the summons and take the child into immediate custody and bring the child before the court.
4. The summons must state that a party is entitled to counsel in the proceedings and that counsel will be provided at public expense if the party is indigent.
5. A party, other than the child, may waive service of summons by written stipulation or by voluntary appearance at the hearing. If the child is present at the hearing, the child's counsel, with the consent of the parent, guardian, or other custodian, or guardian ad litem, may waive service of summons in the child's behalf. This subsection does not apply in a proceeding commenced under section 27-20-30.1.
6. When a child is in detention or shelter care and good cause is shown why service was not completed upon an absent or noncustodial parent, the court may proceed with the hearing on the petition in order to comply with any time limitations under this chapter.

**SECTION 5. AMENDMENT.** Section 27-20-26 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-26. Right to counsel - Exceptions.**

1. Except as otherwise provided in this section, a party who is indigent and unable to employ legal counsel is entitled to counsel at public expense at proceedings commenced under section 27-20-30.1, and at custodial, post-petition, and informal adjustment stages of proceedings under this chapter. During the informal adjustment stage of a proceeding or in a proceeding commenced under section 27-20-30.1 only the child, if determined to be indigent, is entitled to counsel at public expense. In proceedings regarding allegations of unruliness or delinquency, a child's parent, legal guardian, or custodian, if determined to be indigent, is entitled to counsel at public expense only during the dispositional stage of the proceedings. If a party appears without counsel the court shall ascertain whether the party knows the party may be represented by counsel and that the party is entitled to counsel at public expense if indigent. The court may continue the proceeding to enable a party to obtain counsel and, subject to this section, counsel must be provided for an unrepresented indigent party upon the party's request. Counsel must be provided for a child who is under the age of eighteen years and is not represented by the child's parent, guardian, or custodian at custodial, post-petition, and informal adjustment stages of proceedings under this chapter. If the interests of two or more parties conflict, separate counsel must be provided for each of them.
2. An indigent party is one who at the time of requesting counsel is unable, without undue financial hardship, to provide for full payment of legal counsel and all other necessary expenses for representation. A child who, at the time of the proceeding, is under the age of eighteen years is not to be considered indigent under this section if the child's parent can, without undue financial hardship, provide full payment for legal counsel and other expenses of representation. Any parent of a child who is under the age of eighteen and is involved in a proceeding under this chapter is, unless undue financial hardship would ensue, responsible for providing legal counsel and for paying other necessary expenses of representation for the parent's child. The court may enforce performance of this duty by appropriate order.
3. For purposes of this section and section 27-20-49, "party" means the child and the child's parent, legal guardian, or custodian, and includes "child" as defined in subsection 1 of section 27-20-30.1.

**SECTION 6.** Section 27-20-30.1 of the North Dakota Century Code is created and enacted 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 the 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 prepared by the administrative county, as determined by the department of human services.
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 department of human services and as set forth in 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 the department of human services or its agent, the child, and the foster parent;
  - 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, as determined by the department, shall continue foster care case management, unless otherwise agreed to or required by the department;
  - i. That the administrative county or division of juvenile services 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 section 27-20-37, a court may modify or vacate the judicial determination made under subsection 4.

**SECTION 7. AMENDMENT.** Section 27-20-32.2 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-32.2. Reasonable efforts to prevent removal or to reunify - When required.**

1. As used in this section, "reasonable efforts" means the exercise of due diligence, by the agency granted authority over the child under this chapter, to use appropriate and available services to meet the needs of the child and the child's family in order to prevent removal of the child from the child's family or, after removal, to use appropriate and available services to eliminate the need for removal, to reunite the child and the child's family, and to maintain family connections. In determining reasonable efforts to be made with respect to a

- child under this section, and in making reasonable efforts, the child's health and safety must be the paramount concern.
2. Except as provided in subsection 4, reasonable efforts must be made to preserve families, reunify families, and maintain family connections:
    - a. Prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home;
    - b. To make it possible for a child to return safely to the child's home;
    - c. To place siblings in the same foster care, relative, guardianship, or adoptive placement, unless it is determined that such a joint placement would be contrary to the safety or well-being of any of the siblings; and
    - d. 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 contrary to the safety or well-being of any of the siblings.
  3. If the court or the child's custodian determined that continuation of reasonable efforts, as described in subsection 2, is inconsistent with the permanency plan for the child, reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.
  4. Reasonable efforts of the type described in subsection 2 are not required if:
    - a. A court of competent jurisdiction has determined that a parent has subjected a child to aggravated circumstances; or
    - b. The parental rights of the parent, with respect to another child of the parent, have been involuntarily terminated.
  5. Efforts to place a child for adoption, with a fit and willing relative or other appropriate individual as a legal guardian, or in another planned permanent living arrangement, may be made concurrently with reasonable efforts of the type described in subsection 2.
  6. Removal of a child from the child's home for placement in foster care must be based on judicial findings stated in the court's order, and determined on a case-by-case basis in a manner that complies with the requirements of titles IV-B and IV-E of the Social Security Act [42 U.S.C. 620 et seq. and 42 U.S.C. 6701 et seq.], as amended, and federal regulations adopted thereunder, provided that this subsection may not provide a basis for overturning an otherwise valid court order.
  7. For the purpose of section 27-20-30.1, reasonable efforts were made under this section to meet the child's needs before a foster care placement for a child remaining in care for continued foster care purposes.

**SECTION 8. AMENDMENT.** Section 27-20-36 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-36. Limitations of time on orders of disposition.**

1. An order terminating parental rights or establishing a legal guardianship is without limit as to duration.
2. An order of disposition committing a delinquent or unruly child to the division of juvenile services continues in force for not more than twelve months, excluding any period of time the child is on parole from an institution, or until the child is sooner discharged by an institution.
  - a. The court which made the order may extend its duration for additional twelve-month periods subject to like discharge, if:
    - (1) A hearing is held upon motion of the division, or on the court's own motion, prior to the expiration of the order;
    - (2) Reasonable notice of the hearing and an opportunity to be heard are given to the child and the parent, guardian, or other custodian; and
    - (3) The court finds that the extension is necessary for the treatment or rehabilitation of the child.
  - b. A permanency hearing must be conducted within thirty days after a court determines that aggravated circumstances of the type described in subdivisions a, c, d, or e of subsection 3 of section 27-20-02 exist, or within twelve months after a child, subject to an order of disposition under this subsection, is considered to have entered foster care, or is continued in foster care following a previous permanency hearing, including a hearing conducted on a petition filed under section 27-20-30.1. The permanency hearing may be conducted:
    - (1) By the division of juvenile services as a placement hearing under chapter 27-21; or
    - (2) By the court, if the court requires, or if it appears that an appropriate permanency plan could not be carried out without exceeding the authority of the division of juvenile services.
3. Except as provided in subsection 2, an order of disposition pursuant to which a child is placed in foster care may not continue in force for more than twelve months after the child is considered to have entered foster care. Before the extension of any court order limited under this subsection, a permanency hearing must be conducted. Any other order of disposition may not continue in force for more than twelve months.
4. Except as provided in subsection 1, the court may terminate an order of disposition before the expiration of the order or extend its duration for further periods. An order of extension may be made if:
  - a. A hearing is held before the expiration of the order upon motion of a party or on the court's own motion;
  - b. Reasonable notice of the hearing and opportunity to be heard are given to the parties affected;

- c. The court finds the extension is necessary to accomplish the purposes of the order extended; and
  - d. The extension does not exceed twelve months from the expiration of an order limited by subsection 3 or two years from the expiration of any other limited order.
5. Except as provided in subsection 2, the court may terminate an order of disposition or extension prior to its expiration, on or without an application of a party, if it appears to the court that the purposes of the order have been accomplished. If a party may be adversely affected by the order of termination, the order may be made only after reasonable notice and opportunity to be heard have been given to the party.
  6. Except as provided in subsection 1, when the child attains the age of twenty years, all orders affecting the child then in force terminate and the child is discharged from further obligation or control.
  7. If an order of disposition is made with respect to a child under the age of ten years pursuant to which the child is placed in foster care without terminating parental rights and the parent and child relationship, the court, before extending the duration of the order, shall determine upon the extension hearing whether the child is adoptable and whether termination of those rights and that relationship is warranted under section 27-20-44 and is in the best interest of the child. In that case the notice of the extension hearing must also inform the parties affected that the court will determine whether the child is adoptable and whether termination of their parental rights and the parent and child relationship is warranted and in the best interest of the child and that a further order of disposition may be made by the court placing the child with a view to adoption. If the court determines that the child is adoptable and that termination of parental rights and the parent and child relationship is warranted and is in the best interest of the child, the court shall make a further order of disposition terminating those rights and that relationship and committing the child under section 27-20-47.

**SECTION 9. EFFECTIVE DATE.** This Act becomes effective on January 1, 2012.

Approved April 19, 2011  
Filed April 19, 2011

## CHAPTER 228

### SENATE BILL NO. 2087

(Human Services Committee)

(At the request of the Department of Corrections and Rehabilitation)

AN ACT to amend and reenact section 27-20-38 of the North Dakota Century Code, relating to the rights and duties of a legal custodian.

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

**SECTION 1. 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 all parents, grandparents, and any other adult relative suggested by the parents and grandparents, 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 to receive a subsidized guardianship payment.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 229

### HOUSE BILL NO. 1078

(Representatives S. Meyer, Weisz, Delmore)  
(Senators J. Lee, Mathern)

AN ACT to amend and reenact section 27-20-48 of the North Dakota Century Code, relating to the immunity of a guardian ad litem.

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

**SECTION 1. AMENDMENT.** Section 27-20-48 of the North Dakota Century Code is amended and reenacted as follows:

#### **27-20-48. Guardian ad litem - Immunity.**

The court at any stage of a proceeding under this chapter, on application of a party or on its own motion, shall appoint a lay guardian ad litem for a child who is a party to the proceeding if the child has no parent, guardian, or custodian appearing on the child's behalf or their interests conflict with the child's or in any other case in which the interests of the child require a guardian. A party to the proceeding or that party's employee or representative may not be appointed. A guardian ad litem appointed under this section is immune from civil liability for damages for any act or omission arising out of that individual's duties and responsibilities as a guardian ad litem, unless the act or omission constitutes gross or willful negligence or gross or willful misconduct.

Approved March 28, 2011

Filed March 28, 2011

## CHAPTER 230

### HOUSE BILL NO. 1155

(Representatives Klemin, DeKrey, Kingsbury)  
(Senators Lyson, Nething, Olafson)

AN ACT to amend and reenact section 27-20-54 of the North Dakota Century Code, relating to agencies exempt from the court-ordered destruction of juvenile court records.

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

**SECTION 1. 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, 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, 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 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 April 26, 2011  
Filed April 26, 2011

# JUDICIAL PROCEDURE, CIVIL

## CHAPTER 231

### HOUSE BILL NO. 1456

(Representatives Hogan, DeKrey, Delmore, Holman)  
(Senator J. Lee)

AN ACT to create and enact a new section to chapter 28-01 of the North Dakota Century Code, relating to the statute of limitations on civil actions involving childhood sexual abuse.

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

**SECTION 1.** A new section to chapter 28-01 of the North Dakota Century Code is created and enacted as follows:

#### **Limitation on actions alleging childhood sexual abuse.**

Notwithstanding section 28-01-25, a claim for relief resulting from childhood sexual abuse must be commenced within seven years after the plaintiff knew or reasonably should have known that a potential claim exists resulting from alleged childhood sexual abuse. For purposes of this section, "childhood sexual abuse" means any act committed by the defendant against the plaintiff which occurred when the plaintiff was under eighteen years of age and which would have been a violation of chapter 12.1-20 or 12.1-27.2.

Approved April 25, 2011  
Filed April 25, 2011



## CHAPTER 232

### HOUSE BILL NO. 1388

(Representatives Klemin, Kretschmar)  
(Senators Olafson, Nelson)

AN ACT to amend and reenact section 28-05-07 of the North Dakota Century Code, relating to filing of a notice of lis pendens.

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

**SECTION 1. AMENDMENT.** Section 28-05-07 of the North Dakota Century Code is amended and reenacted as follows:

#### **28-05-07. Lis pendens - Effect.**

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

Approved March 29, 2011  
Filed March 29, 2011

## CHAPTER 233

### HOUSE BILL NO. 1026

(Legislative Management)  
(Administrative Rules Committee)

AN ACT to amend and reenact section 28-32-02 of the North Dakota Century Code, relating to authority of administrative agencies to adopt an organizational rule.

#### 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.
2. In addition to other rulemaking requirements imposed by law, each agency ~~shall~~may include in its rules a description of that portion of its organization and functions subject to this chapter, ~~stating 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.

Approved March 28, 2011

Filed March 28, 2011

## CHAPTER 234

### HOUSE BILL NO. 1162

(Representative Keiser)  
(Senator Klein)

AN ACT to create and enact section 28-32-08.2 of the North Dakota Century Code, relating to fiscal notes for agency rules; to amend and reenact subsection 5 of section 28-32-03, subsection 1 of section 28-32-10, and subsection 2 of section 28-32-18 of the North Dakota Century Code, relating to notice of emergency rulemaking and the administrative rules committee carrying over consideration of administrative rules; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Subsection 5 of section 28-32-03 of the North Dakota Century Code is amended and reenacted as follows:

5. The agency shall ~~take appropriate measures~~attempt to make interim final rules known to ~~every person~~persons who the agency can reasonably be expected to believe may be affected by 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 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.

**SECTION 2.** Section 28-32-08.2 of the North Dakota Century Code is created and enacted as follows:

#### **28-32-08.2. Fiscal notes for administrative rules.**

When an agency presents rules for administrative rules committee consideration, the agency 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.

**SECTION 3. AMENDMENT.** Subsection 1 of section 28-32-10 of the North Dakota Century Code is amended and reenacted as follows:

1. An agency shall prepare a full notice and an abbreviated notice of rulemaking.
  - a. The agency's full notice of the proposed adoption, amendment, or repeal of a rule must include a short, specific explanation of the proposed rule and the purpose of the proposed rule, 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 agency's full notice must be filed with the legislative council, and the agency shall request publication of an abbreviated newspaper publication notice at least once in each official county newspaper published in this state. The notice filed with the legislative council must be accompanied by a copy of the proposed rules.

- b. The abbreviated newspaper publication of notice must be in a display-type format with a minimum width of one column of approximately two inches [5.08 centimeters] and a depth of from three inches [7.62 centimeters] to four inches [10.16 centimeters] with a headline describing the general topic of the proposed rules. The notice must also include the 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.

**SECTION 4. AMENDMENT.** Subsection 2 of section 28-32-18 of the North Dakota Century Code is amended and reenacted as follows:

2. The administrative rules committee may find a rule void at the meeting at which the rule is initially considered by the committee or may hold consideration of that rule for one subsequent meeting. If no representative of the agency appears before the administrative rules committee when rules are scheduled for committee consideration, those rules are held over for consideration at the next subsequent committee meeting. Rules are not considered initially considered by the committee under this subsection until a representative of the agency appears before the administrative rules committee when the rules are scheduled for committee consideration. If no representative of the agency appears before the administrative rules committee meeting to which rules are held over for consideration, the rules are void if the rules were adopted as emergency rules and for rules not adopted as emergency rules the administrative rules committee may void the rules, allow the rules to become effective, or hold over consideration of the rules to the next subsequent committee meeting. Within three business days after the administrative rules committee finds that a rule is void, the legislative council shall provide written notice of that finding and the committee's specific finding under subdivisions a through f of subsection 1 to the adopting agency and to the chairman of the legislative management. Within fourteen days after receipt of the notice, the adopting agency may file a petition with the chairman of the legislative management for review by the legislative management of the decision of the administrative rules committee. If the adopting agency does not file a petition for review, the rule becomes void on the fifteenth day after the notice from the legislative council to the adopting agency. If within sixty days after receipt of the petition from the adopting agency the legislative management has not disapproved by motion the finding of the administrative rules committee, the rule is void.

**SECTION 5. EFFECTIVE DATE.** Sections 1 and 3 of this Act are effective for rules for which the notice of rulemaking is filed with the legislative council after

July 31, 2011. Sections 2 and 4 of this Act are effective for rules scheduled for administrative rules committee review after July 31, 2011.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 235

### HOUSE BILL NO. 1087

(Judiciary Committee)

(At the request of the Office of Administrative Hearings)

AN ACT to amend and reenact subsections 1 and 2 of section 28-32-40 of the North Dakota Century Code, relating to the time for filing a petition for reconsideration from a final order of an administrative agency.

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

**SECTION 1. AMENDMENT.** Subsections 1 and 2 of section 28-32-40 of the North Dakota Century Code are amended and reenacted as follows:

1. Any party before an administrative agency who is aggrieved by the final order of the agency, including the administrative agency when the hearing officer is not the agency head or one or more members of the agency head, within fifteen days after notice has been given as required by section 28-32-39, may file a petition for reconsideration with the agency. Filing of the petition is not a prerequisite for seeking judicial review. If the agency's hearing officer issues the agency's final order, the petition for reconsideration must be addressed to the hearing officer, who may grant or deny the petition under subsection 4.
2. Any party ~~appearing, including workforce safety and insurance, that appears~~ before workforce safety and insurance may have file a petition for reconsideration within thirty days within which to file a petition for reconsideration after notice has been given as required by section 28-32-39.

Approved May 9, 2011

Filed May 10, 2011

# JUDICIAL PROCEDURE, CRIMINAL

## CHAPTER 236

### HOUSE BILL NO. 1329

(Representatives Dahl, R. Kelsch, Mock)  
(Senators Miller, Sitte, Warner)

AN ACT to amend and reenact sections 29-04-02 and 29-04-03 of the North Dakota Century Code, relating to statute of limitations in possession of stolen property or services.

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

**SECTION 1. AMENDMENT.** Section 29-04-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **29-04-02. Prosecution for felony other than murder within three years.**

Except as otherwise provided by law, a prosecution for any felony other than murder must be commenced within three years after its commission. Prosecution of felony offenses under chapter 12.1-23 must be commenced within the later of three years of commission of the last act that is an element of the offense, three years of discovery of the stolen property, or three years of discovery of the loss of the property or services. Nothing in this section prevents a person prosecuted for murder from being found guilty of any included offense and punished accordingly.

**SECTION 2. AMENDMENT.** Section 29-04-03 of the North Dakota Century Code is amended and reenacted as follows:

##### **29-04-03. Prosecution for misdemeanor or infraction within two years.**

A prosecution of a misdemeanor or infraction, except as otherwise provided by law, must be commenced within two years after its commission. Prosecution of misdemeanor offenses under chapter 12.1-23 must be commenced within the later of two years of commission of the last act that is an element of the offense, two years of discovery of the stolen property, or two years of discovery of the loss of the property or services.

Approved April 19, 2011  
Filed April 20, 2011

## CHAPTER 237

### HOUSE BILL NO. 1192

(Representatives Dahl, Karls, Sanford, S. Meyer)

AN ACT to amend and reenact section 29-04-05 of the North Dakota Century Code, relating to the commencement of a criminal prosecution; and to repeal sections 29-09-02, 29-09-06, and 29-09-07 of the North Dakota Century Code, relating to criminal procedure and the methods of prosecution.

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

**SECTION 1. AMENDMENT.** Section 29-04-05 of the North Dakota Century Code is amended and reenacted as follows:

**29-04-05. When ~~action~~prosecution is commenced.**

~~An information is filed or an indictment found within the meaning of this chapter when it is presented, if an information, by the state's attorney or person appointed to prosecute, or, if an indictment, by the grand jury, in open court, and there received and filed, or if a complaint, when filed by a magistrate having jurisdiction to hear, try, and determine the action. A prosecution is commenced when a uniform complaint and summons, a complaint, or an information is filed or when a grand jury indictment is returned.~~

**SECTION 2. REPEAL.** Sections 29-09-02, 29-09-06, and 29-09-07 of the North Dakota Century Code are repealed.

Approved March 29, 2011  
Filed March 29, 2011



## CHAPTER 238

### SENATE BILL NO. 2285

(Senators Nething, Lyson, Robinson)  
(Representatives Dahl, Delmore, Skarphol)

AN ACT to create and enact a new subsection to section 29-06-15 of the North Dakota Century Code, relating to arrests without a warrant; and to declare an emergency.

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

**SECTION 1.** A new subsection to section 29-06-15 of the North Dakota Century Code is created and enacted as follows:

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 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.

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

Approved April 26, 2011  
Filed April 26, 2011

## CHAPTER 239

### HOUSE BILL NO. 1065

(Representative DeKrey)

(At the request of the Commission on Legal Counsel for Indigents)

AN ACT to amend and reenact subsection 1 of section 29-07-01.1 of the North Dakota Century Code, relating to payment of and reimbursement for indigent defense attorney's fees and expenses.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 29-07-01.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Lawyers provided to represent indigent persons must be compensated at a reasonable rate to be determined by the commission on legal counsel for indigents. Expenses necessary for the adequate defense of an indigent person prosecuted in district court, other than for a violation of a home rule county's ordinance, when approved by the commission, must be paid by the state. Expenses necessary for the adequate defense of an indigent person prosecuted for violation of a home rule county's ordinance must be paid by the home rule county. Expenses necessary for the adequate defense of an indigent person prosecuted in municipal court, when approved by the judge, must be paid by the city in which the alleged offense took place. The city shall also pay the expenses in any matter transferred to district court pursuant to section 40-18-06.2 or 40-18-15.1 ~~and~~, in any appeal taken to district court from a judgment of conviction in municipal court pursuant to section 40-18-19, and in an appeal or postconviction matter seeking relief from a conviction resulting from violation of a municipal ordinance. A defendant requesting representation by counsel at public expense, or for whom counsel provided at public expense without a request is considered appropriate by the court, shall submit an application for indigent defense services. For an application for indigent defense services in the district court, a nonrefundable application fee of twenty-five dollars must be paid at the time the application is submitted. The district court may extend the time for payment of the fee or may waive or reduce the fee if the court determines the defendant is financially unable to pay all or part of the fee. If the application fee is not paid before disposition of the case, the fee amount must be added to the amount to be reimbursed under this section. Application fees collected under this subsection must be forwarded for deposit in the indigent defense administration fund established under subsection 4.

Approved March 28, 2011  
Filed March 28, 2011

## CHAPTER 240

### HOUSE BILL NO. 1064

(Representative DeKrey)

(At the request of the Commission on Legal Counsel for Indigents)

AN ACT to amend and reenact subsection 2 of section 29-26-22 of the North Dakota Century Code, relating to court administration fees.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 29-26-22 of the North Dakota Century Code is amended and reenacted as follows:

2. In addition, in all criminal cases except infractions, the court administration fee must include one hundred dollars. Of the additional one hundred dollar court administration fee, the first seven hundred fifty thousand dollars collected per biennium must be deposited in the indigent defense administration fund, which must be used ~~to contract~~ for indigent defense services in this state, and the next four hundred sixty thousand dollars collected per biennium must be deposited in the court facilities improvement and maintenance fund. After the minimum thresholds have been collected, one-half of the additional court administration fee must be deposited in each fund.

Approved March 28, 2011  
Filed March 28, 2011

# UNIFORM PROBATE CODE

## CHAPTER 241

### HOUSE BILL NO. 1138

(Judiciary Committee)

(At the request of the Commission on Uniform State Laws)

AN ACT to create and enact chapter 30.1-32.1 of the North Dakota Century Code, relating to the Uniform Real Property Transfer at Death Act; and to amend and reenact sections 30.1-10.1-09 and 30.1-10.1-11 of the North Dakota Century Code, relating to the delivery and recording to a disclaimer of property interest.

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

**SECTION 1. AMENDMENT.** Section 30.1-10.1-09 of the North Dakota Century Code is amended and reenacted as follows:

##### **30.1-10.1-09. (2-1112) Delivery.**

1. In subsections 2 through 11, delivery of a disclaimer may be effected by personal delivery, first-class mail, or any other method likely to result in its receipt.
2. In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust, a disclaimer must be delivered to the personal representative of the decedent's estate, or if a personal representative is not then serving, it must be filed with the court having jurisdiction to appoint the personal representative.
3. In the case of an interest in a testamentary trust, a disclaimer must be delivered to the trustee then serving, or if a trustee is not then serving, to the personal representative of the decedent's estate, or if a personal representative is not then serving, it must be filed with a court having jurisdiction to enforce the trust.
4. In the case of an interest in an inter vivos trust, a disclaimer must be delivered to the trustee then serving, or if a trustee is not then serving, it must be filed with a court having jurisdiction to enforce the trust, or if the disclaimer is made before the time the instrument creating the trust becomes irrevocable, it must be delivered to the settlor of a revocable trust or the transferor of the interest.
5. In the case of an interest created by a beneficiary designation ~~made~~ which is disclaimed before the ~~time~~ the designation becomes irrevocable, the disclaimer must be delivered to the person making the beneficiary designation.
6. In the case of an interest created by a beneficiary designation ~~made~~ which is disclaimed after the ~~time~~ the designation becomes irrevocable, a disclaimer of it

an interest in personal property must be delivered to the person obligated to distribute the interest and the disclaimer of an interest in real property must be recorded in the office of the county recorder of the county where the real property that is the subject of the disclaimer is located.

7. In the case of a disclaimer by a surviving holder of jointly held property, the disclaimer must be delivered to the person to whom the disclaimed interest passes.
8. In the case of a disclaimer by an object or taker in default of exercise of a power of appointment, the disclaimer must be delivered to the holder of the power or to the fiduciary acting under the instrument that created the power, or if a fiduciary is not then serving, it must be filed with the court having authority to appoint the fiduciary.
9. In the case of a disclaimer by an appointee of a nonfiduciary power of appointment, to the holder, personal representative of the holder's estate, or to the fiduciary under the instrument that created the power, or if a fiduciary is not then serving, it must be filed with the court having authority to appoint the fiduciary.
10. In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer must be delivered as provided in subsection 2, 3, or 4, as if the power disclaimed were an interest in property.
11. In the case of a disclaimer of a power by an agent, the disclaimer must be delivered to the principal or the principal's representative.

**SECTION 2. AMENDMENT.** Section 30.1-10.1-11 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-10.1-11. (2-1115) Recording of disclaimer.**

If an instrument transferring an interest in or power over property subject to a disclaimer is required or permitted by law to be filed, recorded, or registered, the disclaimer may be so filed, recorded, or registered. ~~Failure~~Except as required in subsection 6 of section 30.1-10.1-09, failure to file, record, or register the disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.

**SECTION 3.** Chapter 30.1-32.1 of the North Dakota Century Code is created and enacted as follows:

**30.1-32.1-01. Definitions.**

In this chapter:

1. "Beneficiary" means a person that receives property under a transfer on death deed.
2. "Designated beneficiary" means a person designated to receive property in a transfer on death deed.
3. "Joint owner" means an individual who owns property concurrently with one or more other individuals with a right of survivorship. The term includes a joint

tenant and tenant by the entirety. The term does not include a tenant in common.

4. "Property" means an interest in real property located in this state which is transferable on the death of the owner.
5. "Transfer on death deed" means a deed authorized under this chapter.
6. "Transferor" means an individual who makes a transfer on death deed.

#### **30.1-32.1-02. Transfer on death deed authorized.**

An individual may transfer property to one or more beneficiaries effective at the transferor's death by a transfer on death deed.

#### **30.1-32.1-03. Transfer on death deed revocable.**

A transfer on death deed is revocable even if the deed or another instrument contains a contrary provision.

#### **30.1-32.1-04. Transfer on death deed nontestamentary.**

A transfer on death deed is nontestamentary.

#### **30.1-32.1-05. Capacity of transferor.**

The capacity required to make or revoke a transfer on death deed is the same as the capacity required to make a will.

#### **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 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.

#### **30.1-32.1-07. Notice, delivery, acceptance, and consideration not required.**

A transfer on death deed is effective without notice or delivery to or acceptance by the designated beneficiary during the transferor's life or without consideration.

#### **30.1-32.1-08. Revocation by instrument authorized - Revocation by act not permitted.**

1. Subject to subsection 2, an instrument is effective to revoke a recorded transfer on death deed, or any part of it, only if the instrument:
  - a. Is one of the following:

- (1) A transfer on death deed that revokes the deed or part of the deed expressly or by inconsistency;
  - (2) An instrument of revocation that expressly revokes the deed or part of the deed; or
  - (3) An inter vivos deed that expressly revokes the transfer on death deed or part of the deed; and
- b. Is acknowledged by the transferor after the acknowledgment of the deed being revoked and recorded before the transferor's death in the public records in the office of the county recorder of the county where the deed is recorded.
2. If a transfer on death deed is made by more than one transferor, revocation by a transferor does not affect the deed as to the interest of another transferor and a deed of joint owners is revoked only if it is revoked by all of the living joint owners.
  3. After a transfer on death deed is recorded, it may not be revoked by a revocatory act on the deed.
  4. This section does not limit the effect of an inter vivos transfer of the property.

### **30.1-32.1-09. Effect of transfer on death deed during transferor's life.**

During a transferor's life, a transfer on death deed does not:

1. Affect an interest or right of the transferor or any other owner, including the right to transfer or encumber the property;
2. Affect an interest or right of a transferee, even if the transferee has actual or constructive notice of the deed;
3. Affect an interest or right of a secured or unsecured creditor or future creditor of the transferor, even if the creditor has actual or constructive notice of the deed;
4. Affect the transferor's or designated beneficiary's eligibility for any form of public assistance;
5. Create a legal or equitable interest in favor of the designated beneficiary; or
6. Subject the property to claims or process of a creditor of the designated beneficiary.

### **30.1-32.1-10. Effect of transfer on death deed at transferor's death.**

1. Except as otherwise provided in the transfer on death deed, in this section, or in state law on antilapse, revocation by divorce or homicide, survival and simultaneous death, and elective share, if applicable to nonprobate transfers, on the death of the transferor, the following rules apply to property that is the subject of a transfer on death deed and owned by the transferor at death:
  - a. Subject to subdivision b, the interest in the property is transferred to the designated beneficiary in accordance with the deed.

- b. The interest of a designated beneficiary is contingent on the designated beneficiary surviving the transferor. The interest of a designated beneficiary that fails to survive the transferor lapses.
    - c. Subject to subdivision d, concurrent interests are transferred to the beneficiaries in equal and undivided shares with no right of survivorship.
    - d. If the transferor has identified two or more designated beneficiaries to receive concurrent interests in the property, the share of one which lapses or fails for any reason is transferred to the other, or to the others in proportion to the interest of each in the remaining part of the property held concurrently.
  2. Subject to chapter 47-19, a beneficiary takes the property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to which the property is subject at the transferor's death. For purposes of this subsection and chapter 47-19, the recording of the transfer on death deed is deemed to have occurred at the transferor's death.
  3. If a transferor is a joint owner and is:
    - a. Survived by one or more other joint owners, the property that is the subject of a transfer on death deed belongs to the surviving joint owner or owners with right of survivorship; or
    - b. The last surviving joint owner, the transfer on death deed is effective.
  4. A transfer on death deed transfers property without covenant or warranty of title even if the deed contains a contrary provision.

### **30.1-32.1-11. Disclaimer.**

A beneficiary may disclaim all or part of the beneficiary's interest as provided by chapter 30.1-10.1.

### **30.1-32.1-12. Liability for creditor claims and statutory allowances.**

1. To the extent the transferor's probate estate is insufficient to satisfy an allowed claim against the estate or a statutory allowance to a surviving spouse or child, the estate may enforce the liability against property transferred at the transferor's death by a transfer on death deed.
2. If more than one property is transferred by one or more transfer on death deeds, the liability under subsection 1 is apportioned among the properties in proportion to their net values at the transferor's death.
3. A proceeding to enforce the liability under this section must be commenced not later than eighteen months after the transferor's death.

### **30.1-32.1-13. Relation to Electronic Signatures in Global and National Commerce Act.**

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act [15 U.S.C. 7001 et seq.] but does not modify, limit, or supersede section 101(c) of that Act [15 U.S.C. 7001(c)] or authorize



electronic delivery of any of the notices described in section 103(b) of that Act [15 U.S.C. 7003(b)].

**30.1-32.1-14. Application.**

This Act applies to a transfer on death deed made before, on, or after the effective date of this Act by a transferor dying on or after the effective date of this Act. This chapter does not affect any method of transferring property otherwise permitted under the law of this state.

Approved April 27, 2011  
Filed April 27, 2011

# JUDICIAL PROOF

## CHAPTER 242

### HOUSE BILL NO. 1389

(Representatives Klemin, Dahl, Guggisberg)  
(Senators Erbele, Oehlke)

AN ACT to create and enact a new section to chapter 31-13 of the North Dakota Century Code, relating to tampering with a DNA sample; to amend and reenact sections 31-13-03, 31-13-04, and 31-13-07 of the North Dakota Century Code, relating to the collection and testing of DNA samples for law enforcement identification purposes; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 31-13-03 of the North Dakota Century Code is amended and reenacted as follows:

##### **31-13-03. ~~Persons~~Individuals to be tested - Costs.**

1. ~~A person~~An individual eighteen years of age or over who is arrested or summoned to appear before a magistrate for the commission of a felony shall provide to a law enforcement officer or correctional personnel at the time of the individual's arrest or appearance or upon booking into a correctional facility a sample of blood or other body fluids for DNA law enforcement identification purposes and inclusion in the law enforcement identification databases. If it is determined that the ~~person's~~individual's DNA sample is included in the law enforcement identification databases, an additional sample is not required.
2. The provisions of this subsection apply only if ~~a person's~~an individual's DNA sample is not already included in the law enforcement identification databases. The court shall order any ~~person~~individual convicted on or after August 1, 1995, of any sexual offense or attempted sexual offense in violation of section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, or 12.1-20-06, subdivision e or f of subsection 1 of section 12.1-20-07, or section 12.1-20-11 or any other offense when the court finds at sentencing that the ~~person~~individual engaged in a nonconsensual sexual act or sexual contact with another ~~person~~individual during, in the course of, or as a result of, the offense or any ~~person~~individual who is in the custody of the department after July 31, 1995, as a result of a conviction of one of these offenses to have a sample of blood or other body fluids taken by the department for DNA law enforcement identification purposes and inclusion in law enforcement identification databases. The court shall order any ~~person~~individual convicted after July 31, 2001, of a felony offense contained in chapter 12.1-16, 12.1-17, or 12.1-18, section 12.1-22-01, or chapter 12.1-27.2 or any ~~person~~individual who is in the custody of the department after July 31, 2001, as a result of a conviction for one of these offenses to have a sample of blood or other body

fluids taken by the department for DNA law enforcement identification purposes and inclusion in the law enforcement identification databases. The court shall order an individual convicted after July 31, 2005, of any felony offense or an individual arrested for the commission of a felony offense after July 31, 2009, to have a sample of blood or other body fluids taken by the department for DNA law enforcement identification purposes and inclusion in the law enforcement identification databases. DNA samples must be collected immediately, but may be preserved by the department for subsequent analysis upon receipt of sufficient funding. ~~Notwithstanding any other provision of law, if the sentencing court has not previously ordered a sample of blood or other body fluids to be taken, the court retains jurisdiction and authority to enter an order that the convicted person provide a sample of blood or other body fluids as required by this section.~~ Any ~~person~~individual convicted after July 31, 1995, who is not sentenced to a term of confinement, shall provide a sample of blood or other body fluids as a condition of the sentence or probation at a time and place specified by the sentencing court.

3. If the ~~person~~individual from whom a DNA sample is collected is convicted of a felony offense, the sentencing court shall assess the cost of the procedure against the ~~person~~individual being tested. The department shall collect the cost of the procedure from the ~~person~~individual being tested and transfer the amount collected to the attorney general for deposit in the general fund.
4. If the sentencing court has not ordered an individual to provide a sample of blood or other body fluids under this section, or if an individual required to provide a sample of blood or other body fluids under this section has refused to submit a sample of blood or other body fluids, the sentencing court retains jurisdiction to order the individual, including an individual whose sentence to incarceration or supervised probation has expired, to submit a sample of blood or other body fluids for DNA law enforcement identification purposes, or to order the individual to show cause why the individual should not be required to submit a sample of blood or other body fluids for DNA law enforcement identification purposes.
5. If a sample of blood or body fluids collected under this section does not contain sufficient material necessary to obtain accurate DNA identification, the crime laboratory may collect another sample for analysis and inclusion in the law enforcement identification databases.
6. The laboratory shall retain DNA samples in accordance with laboratory DNA sample retention procedures.
7. For purposes of this section, "conviction" and "convicted" means a plea of guilty or a finding of guilt by a court or a jury of one of the above-mentioned crimes, notwithstanding that the court suspended execution of sentence or deferred imposition of sentence in accordance with subsection 3 or 4 of section 12.1-32-02, or a felony offense was reduced to a misdemeanor offense in accordance with subsection 9 of section 12.1-32-02 or section 12.1-32-07.1.

**SECTION 2. AMENDMENT.** Section 31-13-04 of the North Dakota Century Code is amended and reenacted as follows:

### **31-13-04. DNA testing - Procedure - Immunity -Penalty.**

~~The samples~~ Samples of blood ~~and~~ other body fluids for DNA testing ~~must~~ may only be obtained in a medically approved manner by a physician, registered nurse, licensed practical nurse, phlebotomist, medical technologist, or by other qualified ~~medical~~ personnel approved by the laboratory, and packaged and submitted in ~~containers~~ kits approved or provided by the laboratory and in accordance with rules adopted by the laboratory. No civil or criminal liability may attach to any ~~person~~ individual authorized to draw or obtain a sample of blood ~~and~~ other body fluids ~~as provided by this chapter as a result of the act of drawing blood and other body fluids from any person~~ individual for DNA testing, provided the sample of blood and/or other body fluids ~~were~~ was drawn or obtained according to ~~generally accepted medical procedures~~ sampling techniques approved by the laboratory. ~~Any person who tampers or attempts to tamper with any sample of blood or other body fluids or the collection container without lawful authority is guilty of a class C felony.~~

**SECTION 3. AMENDMENT.** Section 31-13-07 of the North Dakota Century Code is amended and reenacted as follows:

### **31-13-07. Removal of DNA profiles from database.**

A ~~person~~

1. An individual whose DNA profile has been included in the database under this chapter may petition the district court to seal the court record on the grounds that the arrest that led to the inclusion of the DNA profile has not resulted in a felony charge within one year; has been resolved by a dismissal, acquittal, or misdemeanor conviction; has not resulted in a felony conviction; or the conviction on which the authority for including the DNA profile was based has been reversed or the case dismissed.
2. The laboratory shall expunge all identifiable information in the database pertaining to the ~~person~~ individual and destroy all samples from the ~~person~~ individual upon receipt of a certified order. The detention, arrest, or conviction of a ~~person~~ individual based upon database information is not invalidated if it is later determined that the specimens or samples were obtained or placed in the database by mistake or if the specimens or samples should have been expunged. The sealed record may not be opened even by order of the court.
3. Civil or criminal liability may not attach to any individual or to any state or local governmental entity for the good-faith inclusion and retention of identifiable information in the database from a sample of blood or other body fluids which has been legally obtained.

**SECTION 4.** A new section to chapter 31-13 of the North Dakota Century Code is created and enacted as follows:

### **Tampering with DNA sample testing - Penalty.**

An individual who willfully tampers or attempts to tamper with a sample of blood or body fluids or a collection device or kit to alter the outcome of DNA testing is guilty of a class C felony. An individual who willfully possesses, distributes, or assists in the use of a device, chemical, or real or artificial sample of blood or body fluids intended to be used to alter the outcome of DNA testing is guilty of a class C felony.

Approved April 19, 2011  
Filed April 20, 2011

## CHAPTER 243

### SENATE BILL NO. 2123

(Government and Veterans Affairs Committee)  
(At the request of the Commission on Uniform State Laws)

AN ACT to create and enact a new chapter to title 31 of the North Dakota Century Code, relating to the Uniform Unsworn Foreign Declarations Act; and to amend and reenact 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.** Section 12.1-11-01 of the North Dakota Century Code is amended and reenacted as follows:

##### 12.1-11-01. Perjury.

1. A person is guilty of perjury, a class C felony, if, in an official proceeding, ~~he~~the person makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a false statement previously made, when the statement is material and ~~he~~the person does not believe ~~it~~the statement to be true.
2. Commission of perjury need not be proved by any particular number of witnesses or by documentary or other types of evidence.
3. ~~Where~~If in the course of one or more official proceedings, the defendant made a statement under oath or equivalent affirmation inconsistent with another statement made by ~~him~~the defendant under oath or equivalent affirmation to the degree that one of them is necessarily false, both having been made within the period of the statute of limitations, the prosecution may set forth the statements in a single count alleging in the alternative that one or the other was false and not believed by the defendant to be true. Proof that the defendant made such statements ~~shall constitute~~constitutes a prima facie case that one or the other of the statements was false, but in the absence of sufficient proof of which statement was false, the defendant may be convicted under this section only if each of such statements was material to the official proceeding in which it was made.
4. For purposes of this section, "false statement under oath or equivalent affirmation" includes a writing made in accordance with section 2 of this Act.

**SECTION 2.** A new chapter to title 31 of the North Dakota Century Code is created and enacted as follows:

##### 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 the federal or a state constitution; a federal or state statute; a judicial decision or order; a rule of court; an executive order; and an administrative rule, regulation, or order.
3. "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.
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. "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.
6. "Sworn declaration" means a declaration in a signed record given under oath. The term includes a sworn statement, verification, certificate, and affidavit.
7. "Unsworn declaration" means a declaration in a signed record that is not given under oath but is given under penalty of perjury.

### **Applicability.**

This chapter applies to an unsworn declaration by a declarant who at the time of making the declaration is physically located outside the boundaries of the United States whether or not the location is subject to the jurisdiction of the United States. This chapter does not apply to a declaration by a declarant who is physically located on property that is within the boundaries of the United States and subject to the jurisdiction of another country or a federally recognized Indian tribe.

### **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.



# JUDICIAL REMEDIES

## CHAPTER 244

### HOUSE BILL NO. 1419

(Representatives Kasper, Nathe, Gruchalla)  
(Senators Klein, Oehlke, Robinson)

AN ACT to create and enact a new section to chapter 32-03 of the North Dakota Century Code, relating to immunity from civil liability for liquefied petroleum gas dealers; and to provide for application.

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

**SECTION 1.** A new section to chapter 32-03 of the North Dakota Century Code is created and enacted as follows:

#### **Liquefied petroleum gas dealers immunity from civil liability.**

1. Any person engaged in this state in the business of selling at retail, supplying, handling, or transporting liquefied petroleum gas is immune from civil liability if the direct cause of any loss, damage, or injury was caused by the alteration, modification, or repair of liquefied petroleum gas equipment or a liquefied petroleum gas appliance if the alteration, modification, or repair was done without the knowledge and consent of the liquefied petroleum gas seller, supplier, handler, or transporter or was completed by a person not certified to repair the equipment or appliance.
2. This section applies only to fixed liquefied petroleum gas fuel systems. "Fixed liquefied petroleum gas fuel system" means an installation with a maximum operating pressure of one hundred twenty-five pounds per square inch [56.70 kilograms per 6.45 square centimeters] or less and includes the container assembly, pressure regulator, piping system, gas utilization equipment and components, and venting system in residential, commercial, or institutional installations.

**SECTION 2. APPLICATION.** This Act applies to alleged injuries, damages, or losses occurring on or after the effective date of this Act.

Approved April 4, 2011  
Filed April 4, 2011



## CHAPTER 245

### SENATE BILL NO. 2083

(Political Subdivisions Committee)  
(At the request of the Office of Management and Budget)

AN ACT to amend and reenact section 32-09.1-05 of the North Dakota Century Code, relating to service of the director of the office management and budget.

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

**SECTION 1. AMENDMENT.** Section 32-09.1-05 of the North Dakota Century Code is amended and reenacted as follows:

#### **32-09.1-05. Service on office of management and budget - Fees.**

Service upon the state of North Dakota, or any state institution, department, or agency, as garnishee, may be made upon the director of the office of management and budget, or the director's authorized designee, in the manner provided by law for service in garnishment proceedings, including the fee to be tendered and paid the office of management and budget for making and filing an affidavit of disclosure in the amount of twenty-five dollars. The fee must be deposited in the state treasury.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 246

### HOUSE BILL NO. 1118

(Government and Veterans Affairs Committee)  
(At the request of the Office of Management and Budget)

AN ACT to amend and reenact section 32-12.2-14 of the North Dakota Century Code, relating to accidents involving state motor vehicles which are reviewed by the risk management accident review board or the department of transportation.

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

**SECTION 1. AMENDMENT.** Section 32-12.2-14 of the North Dakota Century Code is amended and reenacted as follows:

#### **32-12.2-14. Risk management motor vehicle accident review board - Powers - Records - Meetings.**

The director of the office of management and budget shall establish a risk management motor vehicle accident review board to review any accident involving a motor vehicle owned or leased by the state and operated by a state employee that results in bodily injury or significant property damage. The board is composed of the director of the department of transportation, or the director's designee, who shall serve as chairman of the board; the director of the office of management and budget, or the director's designee; the superintendent of the highway patrol or the superintendent's designee; and two state employees selected by the other board members to serve two-year terms.

The risk management motor vehicle accident review board shall review accidents involving state-owned or state-leased vehicles operated by state employees that result in bodily injury or significant property damage in order to improve traffic safety and driver training and to reduce the number of traffic accidents. The board shall adopt rules concerning receiving accident reports, holding meetings, receiving verbal or written information, making recommendations, communicating with state agencies and employees, and informing state agencies of its recommendations. Three members of the board constitute a quorum and an affirmative vote of at least three board members is required for the board to take action and make a recommendation.

The duties of the chairman include scheduling meetings; notifying participants; receiving and maintaining board records, reports, and other material; and communicating with agencies concerning the board's recommendations.

The department of transportation shall report state motor vehicle-related accidents to the board for review ~~if it appears further training could have rendered the accident preventable~~ involving bodily injury or significant property damage or if there was a citation issued to the state employee operating the state-owned or state-leased motor vehicle. After review, the board may recommend driver training; defensive driver training; emergency vehicle operational training; physical, written, or operational examinations; or restrictions on the use of state-owned or state-leased motor vehicles. The state agency employing the employee operating the state-owned or state-leased motor vehicle involved in the traffic accident shall decide whether to implement the board's recommendation.

State employees must be paid and may not be required to take any leave for time needed to assist the board, and all state employers shall reimburse their employees for travel expenses incurred in assisting the board.

The board must be deemed to be a state agency loss-control committee under section 32-12.2-12 and all of the board's current or former members and all participants providing any verbal or written information to the board are entitled to the rights against production of records or testimony as contained in this section.

The department of transportation shall internally review all accidents involving a motor vehicle owned or leased by the state that is not submitted to the board for review to determine whether the accident was preventable and make recommendations to the agency employing the employee involved in the accident which may include recommendations on the same issues as made by the board. The department may defer to the determinations and recommendations of an agency loss control committee approved by the board. An employee may request further review by the board of any determination or recommendation of the department.

Approved March 28, 2011

Filed March 28, 2011

## CHAPTER 247

### HOUSE BILL NO. 1119

(Industry, Business and Labor Committee)  
(At the request of the Office of Management and Budget)

AN ACT to create and enact a new section to chapter 32-12.2 of the North Dakota Century Code, relating to providing voluntary liability coverage to student drivers driving vehicles owned or leased by the state of North Dakota as part of a course of curriculum; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 32-12.2 of the North Dakota Century Code is created and enacted as follows:

##### **Student required driving in educational programs.**

Upon request by any state institution of higher education, the office of management and budget, through the risk management fund, shall provide a defense and administer claims against students arising from the operation of a vehicle owned or leased by the state the operation of which is a required part of an established course of study. Liability shall be limited to the required amounts of financial responsibility contained in section 39-16.1-02. Nothing in this chapter makes the state responsible for the actions of the student or requires indemnification for any loss beyond the limits provided in this section, nor provides any benefits to the student except those minimum levels undertaken in a program of self-insurance filed under section 26.1-41-05.

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

Approved March 14, 2011  
Filed March 14, 2011

## CHAPTER 248

### HOUSE BILL NO. 1452

(Representatives Thoreson, Boehning, Koppelman, Schatz)  
(Senator Krebsbach)

AN ACT to provide landowner immunity for injuries to trespassers.

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

##### SECTION 1.

###### Duty of care to trespasser.

A possessor of land, including an owner, lessee, or other occupant, does not owe a duty of care to a trespasser and is not subject to liability for any injury to a trespasser.

##### SECTION 2.

###### Exceptions to land possessor immunity.

1. a. Notwithstanding section 1 of this Act, a possessor of land may be subject to liability for physical injury or death to a trespasser in the following situations:
  - (1) A land possessor has a duty not to harm the trespasser in a willful and wanton manner, except as permitted under section 12.1-05-06, 12.1-05-07, 12.1-05-07.1, or 12.1-05-07.2;
  - (2) A land possessor that knows of the trespasser's presence on the premises has a duty to exercise ordinary care to avoid injuring that trespasser; and
  - (3) A land possessor may be subject to liability for physical injury or death to a child trespasser resulting from an artificial condition on the land if:
    - (a) The possessor knew or had reason to know that children were likely to trespass at the location of the condition;
    - (b) The condition is one the possessor knew or reasonably should have known involved an unreasonable risk of death or serious bodily harm to children;
    - (c) The injured child did not discover the condition or realize the risk involved in the condition or coming within the area made dangerous by it;
    - (d) The utility to the possessor of maintaining the condition and the burden of eliminating the danger were slight as compared with the risk to the child involved; and

- (e) The land possessor failed to exercise reasonable care to eliminate the danger or otherwise protect the injured child.
- b. For purposes of this subsection, artificial condition means a structure or other manmade condition and does not include living animals.
2. This section does not affect chapter 53-08.
3. This section does not create or increase the liability of any person or entity.

Approved April 25, 2011  
Filed April 25, 2011

# LABOR AND EMPLOYMENT

## CHAPTER 249

### SENATE BILL NO. 2138

(Senators Hogue, Nodland, Larsen)  
(Representatives Bellew, Damschen, Headland)

AN ACT to create and enact a new section to chapter 34-14 of the North Dakota Century Code, relating to employer's payment of accrued paid time off.

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

**SECTION 1.** A new section to chapter 34-14 of the North Dakota Century Code is created and enacted as follows:

#### Limitations on accrued paid time off - Investigation.

1. If an employee separates from employment voluntarily, a private employer may withhold payment for accrued paid time off if:
  - a. At the time of hiring, the employer provided the employee written notice of the limitation on payment of accrued paid time off;
  - b. The employee has been employed by the employer for less than one year; and
  - c. The employee gave the employer less than five days' written or verbal notice.
2. As provided under section 34-14-05, an employee may report a violation under this section. If a report of violation is made within thirty days of the alleged violation, the labor commissioner shall investigate the merits of the claim. If a report is made more than thirty days following the alleged violation, the commissioner may investigate the merits of the claim.

Approved April 26, 2011  
Filed April 26, 2011

# LIENS

## CHAPTER 250

### HOUSE BILL NO. 1328

(Representatives Steiner, Kingsbury, Owens)  
(Senators Andrist, Sitte, Dotzenrod)

AN ACT to amend and reenact sections 35-17-04, 35-29-05, 35-30-02, 35-31-02, and 47-16-03 of the North Dakota Century Code, relating to the procedure for filing an agister's lien, the fees for filing federal tax liens, the procedure to file a processor's lien, the procedure to file an agricultural supplier's lien in the office of the secretary of state or a county recorder, and the procedure to file a landlord's lien in the office of a county recorder.

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

**SECTION 1. AMENDMENT.** Section 35-17-04 of the North Dakota Century Code is amended and reenacted as follows:

##### **35-17-04. Procedure to obtain lien - Statement filed - Contents - Waiver.**

Any person entitled to an agister's lien, within ninety days after taking possession of the animal, may file in the office of the recorder in any county in this state or in the office of the secretary of state, a ~~verified~~ statement signed by the filer containing the following information:

1. The number of and a description of the animals subject to the lien and the legal description as to the location of the animals.
2. The name and address of the person for whom the animals are kept.
3. The name and address of the lienholder.
4. The price agreed upon for keeping the animals and, if no price was agreed upon, the reasonable value of the services.
5. The social security number or, in the case of a debtor doing business other than as an individual, the internal revenue service taxpayer identification number of the person for whom the animals are kept.

The secretary of state shall prescribe one form that can be used to obtain a lien under this section or gain protection under the central notice system, or both. If the statement is not filed within ninety days as required by this section, the person entitled to the lien under section 35-17-03 waives the lien.

**SECTION 2. AMENDMENT.** Section 35-29-05 of the North Dakota Century Code is amended and reenacted as follows:



**35-29-05. Fees.**

1. The fee for filing and indexing each notice of lien is:
  - a. For a lien on real estate, ~~five~~ten dollars, plus ~~two~~three dollars for the second and each succeeding page.
  - b. For a lien on tangible and intangible personal property, ten dollars, plus five dollars to record if filed with a county recorder.
  - c. For all other notices, including a certificate of discharge, nonattachment, or subordination, ten dollars, plus ten dollars if filed toward a lien on real estate with a county recorder.
  - d. For a nonstandard statement when presented for filing, an additional fee of five dollars plus one dollar per page, and if filed on a real estate lien with a county recorder, an additional ten dollars plus three dollars for the second and each succeeding page.
  - e. For ~~all other notices, including~~ a certificate of release or nonattachment, five dollars, which must be paid at the time the lien is filed.
2. The officer may not file or record an instrument under this chapter unless the person offering the instrument for filing or recording has first paid the requisite filing or recording fee.

**SECTION 3. AMENDMENT.** Section 35-30-02 of the North Dakota Century Code is amended and reenacted as follows:

**35-30-02. Procedure to obtain lien.**

1. To obtain an agricultural processor's lien, the person entitled to the lien, within ninety days after the processing is completed, shall file a ~~verified~~ statement signed by the filer in the office of the recorder in any county in this state or in the office of the secretary of state. The statement must contain the following information:
  - a. The name and address of the person for whom the processing was done.
  - b. The name and address of the processor.
  - c. A description of the crops or agricultural products and their amount, if known, subject to the lien together with a reasonable description, including the county as to the location where the crops or agricultural products were grown and the year the crop is to be harvested or was harvested.
  - d. The price agreed upon for processing, or if no price was agreed upon, the reasonable value of the processing.
  - e. The social security number or, in the case of a debtor doing business other than as an individual, the internal revenue service taxpayer identification number of the person for whom the processing was done.
  - f. A description of the processing services and the first date the services were furnished.

2. The secretary of state and the office of the recorder in any county in this state with which a ~~verified~~ statement signed by the filer under subsection 1 is submitted for filing shall reject the statement unless proof of mailing of notification of the lien to the debtor's last-known address by registered or certified mail with return receipt requested is filed with the statement.
3. The secretary of state shall prescribe one form that can be used to obtain a lien under this section or gain protection under the central notice system, or both. Before a processor's lien is filed, a billing statement for the services performed must include notice to the agricultural producer that if the amount due to the agricultural processor is not satisfied a lien may be filed.

**SECTION 4. AMENDMENT.** Section 35-31-02 of the North Dakota Century Code is amended and reenacted as follows:

**35-31-02. Procedure to obtain lien.**

To obtain an agricultural supplier's lien, except an agricultural supplier's lien for furnishing petroleum products, the person entitled to the lien, within one hundred twenty days after the supplies are furnished or the services performed, shall file a ~~verified~~ statement signed by the filer in the office of the recorder of any county in this state or in the office of the secretary of state. To obtain an agricultural supplier's lien for furnishing and delivering petroleum products, the person entitled to the lien, within one hundred fifty days after the petroleum products are furnished or delivered, shall file a ~~verified~~ statement signed by the filer in the office of the recorder of any county in the state or in the office of the secretary of state. The statement must contain the following information:

1. The name and address of the person to whom the supplies were furnished.
2. The name and address of the supplier.
3. A description of the crops, agricultural products, or livestock and their amount or number, if known, subject to the lien together with a reasonable description, including the county as to the location of the crops, agricultural products, or livestock and the year the crop is to be harvested or was harvested.
4. A description and value of the supplies and the first date furnished.
5. The social security number or, in the case of a debtor doing business other than as an individual, the internal revenue service taxpayer identification number of the person to whom the supplies were furnished.

The secretary of state shall prescribe one form that can be used to obtain a lien under this section or gain protection under the central notice system, or both. Before a supplier's lien is filed, a billing statement for the supplies furnished must include notice to the agricultural producer that if the amount due to the agricultural supplier is not satisfied a lien may be filed.

**SECTION 5. AMENDMENT.** Section 47-16-03 of the North Dakota Century Code is amended and reenacted as follows:

**47-16-03. Filing farm lease containing reservation of title to crop - Waiver of rights on failure to file.**

1. When a lease of a farm contains a provision reserving title in the lessor to any part of the crops in excess of the rental share of the lessor until the stated conditions of the lease have been complied with by the lessee, such lease must be filed in the office of the recorder in the county in which the land described therein is located prior to July first in the year in which the crops are raised to render such reservation of title effective as to subsequent purchasers or encumbrancers of any part of the grain over and above the lessor's rental share produced upon the land.
2. The failure to file such lease or contract in accordance with this section constitutes a waiver by the lessor of all rights reserved by that person over and above that person's rental share in such crops as against any subsequent purchaser or encumbrancer of the lessee.
3. The secretary of state may prescribe a form which includes the pertinent information from the lease that may be filed in the central notice system. A lessor may file this form with the recorder and obtain the same rights under this section as if the lessor had filed the lease.
4. The fee required to file and index this notice of lease is:
  - a. As provided in section 11-18-05 if the notice of lease is only a real estate recording;
  - b. As provided in section 41-09-06 if the notice of lease is filed only to gain protection under the central notice system; or
  - c. As provided in section 11-18-05, if the notice of lease is both a real estate recording and filed to gain protection under the central notice system. An additional fee may not be charged for the same statement to gain protection under the central notice system.

Approved April 19, 2011  
Filed April 19, 2011

## CHAPTER 251

### SENATE BILL NO. 2258

(Senators J. Lee, Dever)  
(Representatives Devlin, Weisz)

AN ACT to create and enact a new section to chapter 14-09, two new subsections to section 26.1-02-28, and a new section to chapter 35-34 of the North Dakota Century Code, relating to child support enforcement; to amend and reenact sections 26.1-02-28, 34-15-03, 34-15-04, 35-34-02, 35-34-03, and 35-34-04, subsection 1 of section 35-34-06, and sections 35-34-09 and 35-34-10 of the North Dakota Century Code, relating to child support enforcement; to provide for transition; and to provide an effective date.

#### 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:

##### **Electronic remittal of funds withheld under an income withholding order.**

An income payer that employs more than twenty-four employees at any time and has received more than four income withholding orders under this chapter shall remit any withheld funds by an electronic method approved by the child support agency. An income payer that employs more than twenty-four employees at any time and has received fewer than five income withholding orders under this chapter may choose to opt out of an electronic method approved by the child support agency only through a written request. An income payer that does not comply with this section is deemed to have failed to deliver income under section 14-09-09.3. The child support agency may waive, upon a showing of good cause, the requirement to remit funds electronically.

**SECTION 2. AMENDMENT.** Section 26.1-02-28 of the North Dakota Century Code is amended and reenacted as follows:

##### **26.1-02-28. Child support insurance data match.**

###### **1. As used in this section:**

a. "Claimant" means a resident of this state over fourteen years of age who:

(1) Is a beneficiary under a life insurance policy;

(2) Is an individual who brings a third-party claim against an insured or under an insurance policy for compensation under insurance coverage for bodily injury or workers' compensation; or

(3) Is an individual who brings a first-party claim under an insurance policy for uninsured or underinsured motorist benefits.

b. "Department" means the department of human services and any designee of the department.

- c. "Insurer" includes a government self-insurance pool and any designee of an insurer or government self-insurance pool, but does not include any health insurer participating in a data match under section 50-09-37.
- d. "Personal information" means the name, address, and date of birth of a person; the person's social security number, current motor vehicle operator's license number issued to the claimant by the department of transportation under title 39, or the last four digits of the person's social security number; and any other relevant and available information regarding the person that is requested by the department.
2. Before paying a claim to a claimant for a claim occurring in this state under a contract of insurance issued in this state, an insurer ~~or government self-insurance pool~~ may exchange personal information about the claimant with the department of human services or its designee. This section applies notwithstanding any provision of law making the information confidential.
3. Any personal information that is exchanged under this section is confidential and may only be used to establish or enforce a child support or medical support obligation, or as otherwise permitted or required by law. To the extent feasible, the department shall provide secure electronic processes for exchanging personal information under this section. An insurer shall not be assessed any fee by the department for exchanging claim information under this section.
4. An insurer that exchanges personal information with the department under subsection 2 also shall provide the telephone number of a facsimile machine or electronic mail address to which a lien or demand may be sent to the insurer by the department under chapter 35-34.
5. Notwithstanding anything to the contrary in section 35-34-06, upon agreement of the insurer and the department, if the department files a lien against a claim that is identified under this section:
- a. The department may delay sending the claimant a copy of the notice of the lien until requested by the insurer or until a payment to the claimant is delayed as a result of the lien, whichever occurs first; or
- b. The insurer may provide the claimant with the copy of the notice of lien that is required under section 35-34-06 no later than the date a payment to the claimant is delayed as a result of the lien.
- If a claimant's receipt of notice of a lien is delayed under this subsection, the time for seeking a review of the lien under section 50-09-14 does not begin until the date the notice is mailed or otherwise provided to the claimant.
6. A person is immune from suit or any liability under any federal or state law, including chapter 12.1-13 or 44-04, for acting in good faith under this section. The court shall award reasonable attorney's fees and costs against any person that commences an action that is subsequently dismissed by reason of the immunity granted by this section.
7. A government self-insurance pool that complies with this section is not subject to subsection 1 of section 50-09-08.2.

8. Nothing in this section shall require an insurer to make a payment that is not otherwise required under the contract of insurance.

**SECTION 3. AMENDMENT.** Subsection 2 of section 26.1-02-28 of the North Dakota Century Code is amended and reenacted as follows:

2. Before paying a claim to a claimant for a claim occurring in this state under a contract of insurance issued in this state, an insurer ~~or government self insurance pool~~ may exchange personal information about the claimant with the department ~~of human services or its designee~~, but a government self-insurance pool shall exchange personal information about the claimant with the department. The information must be exchanged as soon as reasonably possible after the first submission of the claim, but not less than ten days prior to making a payment to a claimant. This section applies notwithstanding any provision of law making the information confidential.

**SECTION 4.** Two new subsections to section 26.1-02-28 of the North Dakota Century Code are created and enacted as follows:

A claimant who refuses to provide to an insurer the personal information that the insurer is required to exchange with the department under this section may not receive payment on the claim and may not pursue a suit against the insured or the insurer in this state for the amount of the claim until the information is provided.

An individual who willfully fails to comply with this section is subject to the same liabilities as an income payer under section 14-09-09.3 unless the context indicates otherwise.

**SECTION 5. AMENDMENT.** Section 34-15-03 of the North Dakota Century Code is amended and reenacted as follows:

**34-15-03. Employer reporting.**

1. Except as provided in subsections 2 and 3, each employer shall furnish to the directory of new hires a report that contains the name, address, and social security number of each employee newly hired for work within this state, whether the employer offers health insurance to the employee, and the employer's name and address and the identifying number assigned under section 6109 of the Internal Revenue Code of 1986, as amended [26 U.S.C. 6109], to the employer.
2. An employer who has employees who are employed in two or more states, and who transmits reports magnetically or electronically, may designate one state in which the employer has employees and may transmit a report conforming to subsection 1 to that state. An employer who reports pursuant to this subsection must notify the secretary of the United States department of health and human services, in writing, of the state so designated.
3. Any department, agency, or instrumentality of the United States shall transmit a report, conforming to subsection 1, to the national directory of new hires established pursuant to section 453 of the Social Security Act [42 U.S.C. 653].

4. a. Except as provided in subdivision b, a report required under this section must be made no later than twenty days after the date the employer hires the employee.
- b. If the employer transmits reports magnetically or electronically, a report required under this section may be made by two monthly transmissions, if necessary, not less than twelve nor more than sixteen days apart.

**SECTION 6. AMENDMENT.** Section 34-15-04 of the North Dakota Century Code is amended and reenacted as follows:

**34-15-04. Reporting format.**

1. Each employer report required by this chapter must be made on a W-4 form, ~~or, at the option of the employer,~~ an equivalent form prescribed by the state directory of new hires. ~~The~~
2. Except as provided in subsection 3, the report may be transmitted by first-class mail or by any magnetic or electronic means readable by the department, including facsimile transmission, electronic mail, modem transmission, or other means of electronic communication.
3. An employer that employs more than twenty-four employees at any time must report new hires through an internet-based method provided by the department. An employer that does not comply with this subsection is deemed to have failed to report new hires under section 34-15-05. The department may waive, upon a showing of good cause, the requirement to report new hires electronically.

**SECTION 7. AMENDMENT.** Section 35-34-02 of the North Dakota Century Code is amended and reenacted as follows:

**35-34-02. Lien for past-due child support.**

~~When an obligor is listed on the arrears registry as defined in section 44-09-09.10~~ owes past-due support, the child support agency may establish a lien on ~~personal~~ property of the obligor as provided in this chapter. Except for liens under section 35-34-05, the amount of a lien under this chapter includes any past-due support that is owed when the lien is perfected and any past-due support that accrues after the lien is perfected.

**SECTION 8.** A new section to chapter 35-34 of the North Dakota Century Code is created and enacted as follows:

**Child support lien registry.**

The child support agency shall create a child support lien registry using an interactive website. The registry shall include a listing of any obligor who owes past-due support that is being enforced by the child support enforcement agency, the obligor's date of birth, and the amount of past-due support that is being enforced by the child support enforcement agency. The lien registry website must be available to the public and support a search by last name of the obligor and other information provided by the person using the website. Any real or titled personal property, except the homestead or other property that is exempt under section 28-22-02, of an obligor who is listed on the lien registry or which the obligor thereafter acquires in this state is subject to a lien. A lien under this section is perfected as of the date the lien is first

listed on the child support lien registry, but is not effective against a good-faith purchaser of titled personal property unless the lien is recorded on that title. The child support agency must subordinate its lien under this section upon request of a third party if:

1. The request is accompanied by documentation from the lien registry website showing the child support lien balance as of the date the third party perfected its interest in the property, to the extent that the current balance of the child support lien exceeds the balance when the third party perfected its interest; or
2. The request is made within ninety days of the date the lien is first listed on the child support lien registry and the third party proves that it attempted to perfect an interest in the property prior to the creation of the child support lien.

**SECTION 9. AMENDMENT.** Section 35-34-03 of the North Dakota Century Code is amended and reenacted as follows:

**35-34-03. Vehicle lien.**

1. In the case of a vehicle, the child support agency may ~~establish a lien by filing~~ file a notice of lien with the director of the department of transportation. The notice must be in a form prescribed by the director and contain a description of the vehicle, the name and last-known address of the obligor, and any other information required by the director. The notice of lien must state that the child support obligation is past due and that a copy of the notice of lien has been served on the obligor by first-class mail at the obligor's last-known address.
2. Upon filing of the notice of lien in accordance with this section, the director shall demand in writing the surrender of the certificate of title from the obligor or a superior lienholder for the purpose of recording the lien on the certificate of title. Upon receipt of the certificate of title, the director shall record the fact of the lien and the identity of the lienholder on the certificate of title and deliver the certificate of title to the vehicle's owner or, if a superior lienholder had possession of the certificate of title, to that superior lienholder. If the obligor or superior lienholder fails to surrender the certificate of title within fifteen days after the written demand by the director, the director shall notify the child support agency seeking the lien.
3. Upon receipt of notice from the director that the obligor or superior lienholder has not responded to the demand for surrender of a title certificate, the child support agency may obtain an order from a court of competent jurisdiction requiring the certificate of title to be delivered to the court so that a lien may be properly recorded.
4. No fee may be charged by the director for services provided under this section.
5. The director may determine a certificate of title to have been fraudulently procured if endorsed by a previous owner who, at the time the endorsement was made:
  - a. ~~Was, was~~ an obligor who owed past-due child support; ~~and~~
  - b. ~~Had been served with a copy of a notice of lien filed under this section with respect to the vehicle described on that certificate of title.~~



6. ~~A lien under this section is perfected when the lien is recorded on the certificate of title.~~

<sup>89</sup> **SECTION 10. AMENDMENT.** Section 35-34-04 of the North Dakota Century Code is amended and reenacted as follows:

**35-34-04. Vessel lien.**

1. In the case of a vessel, the child support agency may ~~establish a lien by filing~~ file a notice of lien with the secretary of state if the value of the vessel is estimated to be at least twice the cost of establishing the lien. The notice must contain a description of the make, model designation, and serial number of the vessel, including its identification or registration number, if any, and the name, social security number, and last-known address of the obligor. The notice of lien must state that the child support obligation is past due and that a copy of the notice of lien has been served on the obligor by first-class mail at the obligor's last-known address.
2. Upon filing of the notice of lien in accordance with this section, the notice of lien must be indexed by the secretary of state in the central indexing system and may be enforced and foreclosed in the same manner as a security agreement under the provisions of title 41.
3. The secretary of state shall remove and destroy the lien notification statement in the same manner as provided for other liens in section 11-18-14 for the recorder.
4. ~~A lien under this section is perfected when notice of the lien is filed with the secretary of state.~~
5. The child support agency may file an amendment to correct the social security number of the obligor, to correct the spelling of the obligor's name, or to correct or change the address of the obligor.

**SECTION 11. AMENDMENT.** Subsection 1 of section 35-34-06 of the North Dakota Century Code is amended and reenacted as follows:

1. In the case of untitled personal property ~~that does not consist of a vehicle, a vessel, or other than~~ an account maintained in a financial institution, the child support agency may establish a lien on such personal property by filing a notice of lien with the office of the recorder in the county in which the personal property may be found, with the secretary of state, or with a third party who is in possession of the personal property. The notice must particularly describe the property to be subjected to the lien and the name and last-known address of the obligor. The notice of lien must state that the child support obligation is past due and that a copy of the notice of lien has been served on the obligor by first-class mail at the obligor's last-known address.

**SECTION 12. AMENDMENT.** Section 35-34-09 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>89</sup> Section 35-34-04 was also amended by section 2 of Senate Bill No. 2249, chapter 456.

**35-34-09. Immunity from liability.**

A person in possession of, or obligated with respect to, property, who, upon demand of the child support agency, surrenders the property, complies with section 35-34-12, or otherwise acts in good faith to comply with the requirements in this chapter, discharges its obligation to the obligor with regard to the property and is immune from suit or any liability under any federal or state law. 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.

**SECTION 13. AMENDMENT.** Section 35-34-10 of the North Dakota Century Code is amended and reenacted as follows:

**35-34-10. Action to enforce lien.**

In any case in which there has been a refusal or neglect to pay child support, the child support agency, in addition to any other relief, may enforce a lien arising under this chapter by demanding in writing the surrender of the property, issuing an execution under chapter 28-21, or serving a deduction order under section 50-09-35. The child support agency also may file an action in any court of competent jurisdiction to enforce a lien under this chapter. The filing of an action does not preclude the child support agency from pursuit of any other means of enforcement available under state or federal law. A person in possession of, or obligated with respect to, property that is subject to a lien under this chapter is subject to the same duties and liabilities as an income payer under section 14-09-09.3 unless the context indicates otherwise.

**SECTION 14. TRANSITION.** The registry created in section 8 of this Act may include any lien under chapter 35-34 that exists on the effective date of section 8 of this Act. Any lien that is added to the lien registry under this section retains its original effective date and priority.

**SECTION 15. EFFECTIVE DATE.** Section 1 and sections 5 through 14 of this Act become effective on January 1, 2012. Sections 3 and 4 of this Act become effective on August 1, 2013.

Approved April 20, 2011  
Filed April 20, 2011

# LIVESTOCK

## CHAPTER 252

### SENATE BILL NO. 2128

(Senators Bowman, Erbele)  
(Representatives Kempenich, S. Meyer)

AN ACT to create and enact a new section to chapter 36-15 of the North Dakota Century Code, relating to reimbursement for losses during official livestock disease testing required by the state veterinarian; to provide an appropriation; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 36-15 of the North Dakota Century Code is created and enacted as follows:

##### Disease testing of livestock - Reimbursement for loss.

1. A livestock owner may file a claim with the state board of animal health seeking partial reimbursement for the value of any livestock that died as a direct result of official disease testing required by the state veterinarian and conducted on the owner's herd or flock by the state veterinarian or the state veterinarian's designee on or after July 1, 2011.
2. The board shall evaluate each claim in the order of filing. If the board determines that a claim is meritorious, the board shall provide reimbursement to the owner in an amount not exceeding five hundred dollars per animal. A decision by the board regarding the animal's cause of death or the amount of reimbursement is final.
3. After expending all biennial appropriations for the provision of reimbursements under this section, the board may not accept any additional claims.

**SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$4,900, or so much of the sum as may be necessary, to the state board of animal health for the purpose of providing reimbursement for losses incurred as a result of official disease testing of livestock, for the biennium beginning July 1, 2011, and ending June 30, 2013. Any moneys that remain unexpended under this section are not subject to cancellation in accordance with section 54-44.1-11.

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

Approved April 25, 2011  
Filed April 25, 2011

# MILITARY

## CHAPTER 253

### SENATE BILL NO. 2090

(Judiciary Committee)  
(At the request of the Adjutant General)

AN ACT to amend and reenact sections 37-01-03, 37-01-22, and 37-01-43 and subsection 7 of section 37-28-02 of the North Dakota Century Code, relating to operation of the North Dakota national guard.

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

**SECTION 1. AMENDMENT.** Section 37-01-03 of the North Dakota Century Code is amended and reenacted as follows:

**37-01-03. Articles of uniform code of military justice applicable in state - Regulations governing - Punishment for offenses while on duty.**

The articles of uniform code of military justice governing the armed forces of the United States as codified in the Manual for Courts-Martial, United States, ~~1984 (1998 edition)~~ as effective through 2010, now in effect, are a part of this title so far as the same are applicable and not modified by any provision of this title. A person who commits an offense while on duty may be tried by a court-martial lawfully appointed even after such duty has terminated, and if found guilty, the accused must be punished according to the articles of uniform code of military justice and the rules and regulations governing the armed forces of the United States and within the limits prescribed in this title and by federal law for the courts-martial in the national guard. In any case in which the person alleged to have committed the offense could be charged either under the code of military justice or the civil law of this state, the officer whose duty it is to approve such charge, in the officer's discretion, may order the person charged or subject to being charged to be turned over to the civil authorities for trial. Whenever reference is made to the articles of uniform code of military justice, to the military service, or to the armed forces of the United States, such reference shall be deemed to include the military service of this state. The intent of this title and of all laws of this state affecting the military forces is to conform to all acts and regulations of the United States affecting the same subjects, and all laws of this state shall be construed to effect this purpose.

**SECTION 2. AMENDMENT.** Section 37-01-22 of the North Dakota Century Code is amended and reenacted as follows:

**37-01-22. Governor may make rules and regulations governing military forces in state - Limitations - Effect.**

The governor may make such rules and regulations as deemed expedient for the government of the military forces of this state, but such rules and regulations must conform to the provisions of this title and, as nearly as practicable, to those governing the ~~United States army~~ armed forces of the United States. When promulgated, such

rules and regulations have the same force and effect as the provisions of this title and may not be repealed, altered, amended, or added to except by the commanding officer of the national guard with the approval of the governor.

**SECTION 3. 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 ~~Soldiers and Sailors Civil Relief Act of 1940 [Pub. L. 102-12; 405 Stat. 34; 50 U.S.C. 501-548 and 560-593]~~ Servicemembers Civil Relief Act, as effective through December 2003 [50 U.S.C. App. sections 501-596].

**SECTION 4. AMENDMENT.** Subsection 7 of section 37-28-02 of the North Dakota Century Code is amended and reenacted as follows:

7. a. "Resident" means a veteran who was a bona fide resident of the state of North Dakota at the time of mobilization or, in the case of an active component member, at the time of deployment for which the member received an expeditionary medal or campaign badge, as determined under the rules of the adjutant general and the laws of this state. "Resident" includes all mobilized members of the North Dakota national guard.
- b. "Veteran" means a member of the national guard or reserve component who was activated under 10 U.S.C. 12301, as effective through October 2004, and 10 U.S.C. 12302, as effective through 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, or active component member awarded the expeditionary medal or campaign badge for service after December 5, 1992, who was a resident of the state of North Dakota, and who has not received bonus or adjusted compensation from another state for the period of service.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 254

### HOUSE BILL NO. 1271

(Representatives Boehning, Amerman, Winrich)  
(Senators Berry, Marcellais)

AN ACT to amend and reenact subsection 2 of section 37-01-42 of the North Dakota Century Code, relating to honorary high school diplomas for Korean conflict veterans.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 37-01-42 of the North Dakota Century Code is amended and reenacted as follows:

2. Any Korean conflict veteran who did not receive a high school diploma may apply for an honorary high school diploma, provided:
  - a. The veteran was a member of the United States armed forces between June ~~25~~27, 1950, and ~~July 27, 1953~~January 31, 1955; and
  - b. The veteran was honorably discharged from the United States armed forces.

Approved April 8, 2011  
Filed April 11, 2011

## CHAPTER 255

### SENATE BILL NO. 2069

(Government and Veterans Affairs Committee)  
(At the request of the Adjutant General)

AN ACT to create and enact a new section to chapter 37-01 of the North Dakota Century Code, relating to reimbursement of certain medical expenses for North Dakota national guard members while on state active duty; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 37-01 of the North Dakota Century Code is created and enacted as follows:

**Reimbursement of certain medical expenses for North Dakota national guard members while on state active duty.**

The North Dakota national guard is authorized to pay medical expenses for national guard members who are called to state active duty when the member sustains an injury or illness that is found to have occurred within the line of duty and is not covered by workforce safety and insurance and when such treatment occurred while on state active duty. Payments shall be made only for costs not covered by other health insurance. Coverage of qualifying medical expenses is subject to rules set forth by the office of the adjutant general and subject to available funds.

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

Approved April 1, 2011  
Filed April 1, 2011

## CHAPTER 256

### HOUSE BILL NO. 1316

(Representatives Owens, Brandenburg, DeKrey)  
(Senator Schaible)

AN ACT to amend and reenact section 37-14-12 of the North Dakota Century Code, relating to the appeal of an application for relief or assistance provided under a department of veterans' affairs program.

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

**SECTION 1. AMENDMENT.** Section 37-14-12 of the North Dakota Century Code is amended and reenacted as follows:

#### **37-14-12. Decision of department appealable.**

The department of veterans' affairs may grant or refuse an application for relief or assistance from financial assistance programs under the control of the department under policies set by the administrative committee on veterans' affairs. The committee shall adopt and establish an appeal process. The department's decisions are appealable to an appeals committee appointed by the chairman of the administrative committee, ~~and the decision of the committee is final.~~ A hearing before the appeals committee may be closed upon request of the applicant. An applicant who requests a closed hearing may invite to that hearing any two representatives and the applicant's spouse or one other family member. Each decision of the appeals committee must give the reasons for granting or refusing an application for relief or assistance. The decision of the appeals committee is final. The record of the hearing, including the identity of the applicant, is an exempt record.

Approved April 19, 2011  
Filed April 19, 2011



## CHAPTER 257

### HOUSE BILL NO. 1468

(Representatives Porter, R. Kelsch, Wieland, Metcalf)  
(Senators Cook, Dever)

AN ACT to amend and reenact section 37-14-14 of the North Dakota Century Code, relating to the veterans' postwar trust fund; and to provide for an appropriation to the department of veterans' affairs and for a transfer from the department of veterans' affairs.

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

**SECTION 1. AMENDMENT.** Section 37-14-14 of the North Dakota Century Code is amended and reenacted as follows:

##### **37-14-14. Veterans' postwar trust fund.**

The veterans' postwar trust fund is a permanent trust fund of the state of North Dakota and consists of moneys transferred or credited to the fund, ~~pursuant to~~ under this chapter and other laws. Investment of the fund is the responsibility of the state treasurer who shall invest the fund only in those legal investments authorized by section 21-10-07. All income received from investments is to be utilized only for programs of benefit and service to veterans or their dependents, and all income earned in a biennium is appropriated to the administrative committee on veterans' affairs on a continuing basis in the following biennium and not in the biennium the income is earned for expenditure on these programs as authorized by law.

**SECTION 2. APPROPRIATION - TRANSFER - DEPARTMENT OF VETERANS' AFFAIRS.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$210,000, or so much of the sum as may be necessary, to the department of veterans' affairs to be used in lieu of income generated from the veterans' postwar trust fund for programs authorized by law to benefit and serve veterans or their dependents, for the biennium beginning July 1, 2011, and ending June 30, 2013. The income generated by the veterans' postwar trust fund during the biennium beginning July 1, 2011, and ending June 30, 2013, must be held with the corpus of the fund for appropriation to the department of veterans' affairs as income for the biennium beginning July 1, 2013, and ending June 30, 2015.

**SECTION 3. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$50,000, or so much of the sum as may be necessary, to the department of veterans' affairs for the purpose of purchasing vans for the transport of veterans or their dependents, for the biennium beginning July 1, 2011, and ending June 30, 2013.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 258

### SENATE BILL NO. 2071

(Government and Veterans Affairs Committee)  
(At the request of the Adjutant General)

AN ACT to create and enact a new subsection to section 37-17.1-05 of the North Dakota Century Code, relating to calling up retired former members of the North Dakota national guard to state active duty in times of disasters or emergencies; and to declare an emergency.

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

**SECTION 1.** A new subsection to section 37-17.1-05 of the North Dakota Century Code is created and enacted as follows:

Authorize the adjutant general to recall to state active duty, on a volunteer basis, former members of the North Dakota national guard. Those recalled must possess the qualifications required by the disaster or emergency. Recall under this subsection is effective only for the duration of the disaster or emergency and recalled personnel will be released from state active duty upon competent authority that the requirement of their service under this subsection has passed. Compensation for personnel recalled under this subsection will be based upon section 37-07-05.

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

Approved April 7, 2011

Filed April 7, 2011

## CHAPTER 259

### SENATE BILL NO. 2091

(Judiciary Committee)  
(At the request of the Adjutant General)

AN ACT to amend and reenact subsection 1 of section 37-17.1-16 of the North Dakota Century Code, relating to liability of federal government employees assisting in a state disaster; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 37-17.1-16 of the North Dakota Century Code is amended and reenacted as follows:

1. All functions hereunder and all other activities relating to emergency management are hereby declared to be governmental functions. The state, a county or city, any disaster or emergency worker, an employee of a federal agency on loan or leave to the state in support of emergency service response whether the emergency is declared or undeclared, or any other person providing goods or services during an emergency if the person is working in coordination with and under the direction of an appropriate governmental emergency or disaster response entity, complying with or reasonably attempting to comply with this chapter, or any executive order or disaster or emergency operational plan pursuant to this chapter, or pursuant to any ordinance relating to any precautionary measures enacted by any county or city of the state, except in case of willful misconduct, gross negligence, or bad faith, is not liable for the death of or injury to persons, or for damage to property, as a result of any such activity. This section does not affect the right of any person to receive benefits to which that person would otherwise be entitled under this chapter, or under workforce safety and insurance law, or under any pension law, nor the right of any such person to receive any benefits or compensation under any Act of Congress.

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

Approved April 19, 2011  
Filed April 20, 2011

## CHAPTER 260

### SENATE BILL NO. 2107

(Transportation Committee)  
(At the request of the Adjutant General)

AN ACT to amend and reenact sections 37-17.1-23 and 39-10-03.2 of the North Dakota Century Code, relating to the disaster or emergency loan funding process and removal of department of emergency services from blue light rulemaking.

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

**SECTION 1. AMENDMENT.** Section 37-17.1-23 of the North Dakota Century Code is amended and reenacted as follows:

##### **37-17.1-23. Disaster or emergency recovery funding - Loan authorization.**

1. When approved by the emergency commission, the ~~division of homeland security~~office of the adjutant general is authorized to borrow from the Bank of North Dakota, to match federal funds under the Robert T. Stafford Disaster Emergency Assistance Act [Public Law 93-288, as amended]. In addition to the principal repayment, the Bank of North Dakota shall receive interest on the loan at a rate equal to other state agency borrowings. On behalf of the state, the ~~division of homeland security~~office of the adjutant general shall administer the disaster or emergency recovery program according to state procedures based on federal laws or regulations. After a county or group of counties have been declared a major disaster or emergency area by the president, the ~~division office of the adjutant general~~ shall submit a request to the emergency commission for:
  - a. Approval to make an application for a loan from the Bank of North Dakota;
  - b. Approval for additional personnel required to perform the anticipated recovery activities; and
  - c. Authority to spend additional state and federal funds for the recovery program.
2. If the request is acceptable, the emergency commission shall approve the request and issue a notice of its action to the ~~division office of the adjutant general~~, Bank of North Dakota, and the office of management and budget. The ~~division office of the adjutant general~~ shall keep the emergency commission apprised of the progress of the recovery operation and submit a final report upon completion of the project. The ~~emergency commission office of the adjutant general~~ is responsible to repay any loan, including accrued interest, from the Bank of North Dakota which is provided under this section. If at the end of the biennium a balance exists on the loan, the ~~emergency commission office of the adjutant general~~ shall request the legislative assembly for a deficiency appropriation to repay the loan.

**SECTION 2. AMENDMENT.** Section 39-10-03.2 of the North Dakota Century Code is amended and reenacted as follows:

**39-10-03.2. Class C authorized emergency vehicles.**

All class B specifications apply to class C authorized emergency vehicles except that a ~~rotating~~ blue flashing light must be displayed in place of an amber light as provided in section 39-10-03.1. ~~With respect to vehicles used by state and local disaster emergency services personnel, the division of homeland security is responsible for adopting rules for the use of flashing blue lights in accordance with chapter 28-32.~~

Approved April 26, 2011  
Filed April 26, 2011

## CHAPTER 261

### SENATE BILL NO. 2369

(Senators Stenehjelm, G. Lee, Wanzek, Robinson)  
(Representatives Carlson, D. Johnson)  
( Approved by the Delayed Bills Committee)

AN ACT to amend and reenact section 37-17.1-27 of the North Dakota Century Code, relating to the state disaster relief fund; to provide appropriations to the adjutant general for emergency snow removal grants, flood mitigation, and for state disasters; to provide for a transfer; to provide for a budget section report; and to declare an emergency.

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

**SECTION 1. 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 defraying the expenses of state disasters, including providing funds required to match federal funds for expenses associated with presidential-declared disasters in the state. Any interest or other fund earnings must be deposited in the fund.

**SECTION 2. APPROPRIATION - BUDGET SECTION REPORT.** Notwithstanding the provisions of section 37-17.1-27, there is appropriated out of any moneys in the state disaster relief fund in the state treasury, not otherwise appropriated, the sum of \$9,000,000, or so much of the sum as may be necessary, to the adjutant general for the purpose of providing emergency snow removal grants, for the period beginning with the effective date of this Act and ending June 30, 2011. A county, township, or city may apply to the department of emergency services for an emergency snow removal grant for reimbursement of up to sixty percent of the snow removal costs incurred by the county, township, or city for the period January 2011 through March 2011 that exceeded two hundred percent of the average snow removal cost for these months during the years 2004 through 2008. Each county, township, or city requesting reimbursement under this section shall submit the request in accordance with rules developed by the department of emergency services. The department of emergency services shall distribute the grants prior to June 30, 2011, and shall report to the budget section regarding the grants awarded under this section. The funding provided in this section is to be considered one-time funding and any unspent funds are not available for future snow removal assistance, but may be used for purposes as provided for in section 4 of this Act.

**SECTION 3. APPROPRIATION - TRANSFER - PERMANENT OIL TAX TRUST FUND - STATE DISASTER RELIEF FUND.** There is appropriated out of any moneys in the permanent oil tax trust fund in the state treasury, not otherwise appropriated, the sum of \$22,000,000, which the office of management and budget shall transfer to the state disaster relief fund during the period beginning with the effective date of this Act and ending June 30, 2011.

**SECTION 4. APPROPRIATION.** There is appropriated out of any moneys in the state disaster relief fund in the state treasury, not otherwise appropriated, the sum of \$22,000,000, or so much of the sum as may be necessary, to the adjutant general for the purpose of defraying expenses only associated with state disasters and flood mitigation efforts as authorized in subsections 1 through 5 for the period beginning with the effective date of this Act and ending June 30, 2013. The funds provided in this section may only be used by the adjutant general, subject to emergency commission and budget section approval, for:

1. State costs relating to flooding that occurs during the spring of 2011 associated with presidential-declared disasters in the state.
2. a. Notwithstanding the provisions of section 37-17.1-27, flood disaster relief or disaster mitigation projects in incorporated cities that:
  - (1) Are in imminent threat of being flooded;
  - (2) Are underserved by adequate flood protection measures; and
  - (3) Are expected to lose land due to flooding for one year or longer.
- b. The adjutant general may spend funds for purposes as provided for in this subsection only to the extent that federal funds are not available for this flood disaster relief or these disaster mitigation projects as certified by the adjutant general to the office of management and budget.
- c. Total expenses paid from the state disaster relief fund under this subsection may not exceed \$3,200,000.
3. a. Notwithstanding the provisions of section 37-17.1-27, grants to political subdivisions for a portion of the local share required to match federal funds on road grade raising projects located on any natural body of water that comprises more than one hundred fifty thousand acres at current water levels and has risen more than twenty-five feet since 1993, subject to the road:
  - (1) Qualifying for federal emergency management agency grade raise matching funds;
  - (2) Having been inundated for six months or more or being expected to become inundated for six months or more after April 1, 2011;
  - (3) Being the only access road to a residence; or
  - (4) Being identified as a primary road in the county strategic road plan.
- b. The state will pay the state share required to match federal funds on eligible road grade raising projects and:
  - (1) Fifty percent of the local share on eligible county or township roads for a county or township that has lost up to thirty-three percent of its taxable land within the township where the road is located due to inundated lands since 1993.
  - (2) Seventy-five percent of the local share on eligible county or township roads for a county or township that has lost more than thirty-three

percent but less than fifty percent of its taxable land within the township where the road is located due to inundated lands since 1993.

- (3) Ninety percent of the local share on eligible county or township roads for a county or township that has lost fifty percent or more of its taxable land within the township where the road is located due to inundated lands since 1993.
4. Grants to political subdivisions for a portion of the local share required to match federal emergency relief funding relating to disasters occurring from January 2011 through June 2011. A political subdivision may apply to the adjutant general for an emergency relief grant under this subsection for up to fifty percent of the local match required to receive the federal emergency relief funding.
5. State expenses associated with presidential-declared disasters in the state.

**SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 27, 2011

Filed April 27, 2011



## CHAPTER 262

### SENATE BILL NO. 2279

(Senators G. Lee, Lyson, Sitte)  
(Representatives Boehning, Nathe, Wrangham)

AN ACT to amend and reenact sections 37-19.1-01, 37-19.1-02, 37-19.1-03, and 37-19.1-04 of the North Dakota Century Code, relating to veterans' preference; and to provide for a legislative management study.

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

**SECTION 1. AMENDMENT.** Section 37-19.1-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **37-19.1-01. Definitions.**

As used in this chapter:

1. "Agency" or "governmental agency" means all political subdivisions and the state, including any state agency, board, bureau, commission, department, officer, and any state institution or enterprise authorized to employ individuals either temporarily or permanently.
2. "Chief deputy" means the individual who is appointed by an elected or appointed official under express statutory authority to hire a chief deputy and who is authorized to act on behalf of that official. The term does not include an individual appointed to a position that must be filled under a competitive personnel system.
3. "Competitive personnel system" means a system that rates applicants for a position using an objective set of skills, knowledge, abilities, behaviors, or other characteristics required for the position.
4. "Disabled veteran" means a veteran who is found to be entitled to a service-connected disability rating as determined by the United States veterans' administration.
- ~~4-5.~~ "Justifiable cause" means grounds for action that are in accord with sufficient reason that can be justified or defended as correct. Justifiable cause not to hire a veteran must be something specific to that individual which renders the individual unsuitable for the position.
- ~~5.~~ "~~Personnel system" means a system that rates applicants for a position using an objective set of skills, knowledge, abilities, behaviors, or other characteristics required for the position.~~
6. "Political subdivision" means counties, cities, townships, and any other governmental entity created by state law which employs individuals either temporarily or permanently.

7. "Private secretary" means the individual who is appointed by an elected or appointed official under express legal authority to hire a private secretary or administrative assistant and who is authorized to handle correspondence, keep files, schedule appointments, and do other clerical work of a more personal and confidential nature for that official, but does not include an individual appointed to a position that must be filled under a competitive personnel system.
8. "Veteran" means a North Dakota resident who is a wartime veteran as defined in subsection 2 of section 37-01-40.

<sup>90</sup> **SECTION 2. AMENDMENT.** Section 37-19.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**37-19.1-02. Public employment preference to veterans - Residency requirements.**

1. Veterans are entitled to preference, over all other applicants, in ~~appointment or employment~~ recruitment and selection processes by governmental agencies, provided that such veteran is a United States citizen at the time of application for employment. Veterans qualified for preference may not be disqualified from holding any position with an agency because of physical or mental disability, unless the disability renders them unable to properly perform the duties of the position applied for. To receive veterans' preference, an applicant must submit the following documentation:
  - a. An applicant claiming veterans' preference shall provide a copy of report of separation DD-214.
  - b. An applicant claiming disabled veterans' preference shall provide a copy of report of separation DD-214 and a letter less than one year old from the veterans' administration indicating the veteran's disability status.
  - c. An applicant claiming veterans' preference as an eligible spouse of a deceased veteran shall provide a copy of the marriage certificate, the veteran's report of separation DD-214, and the veteran's death certificate.
  - d. An applicant claiming disabled veterans' preference as an eligible spouse of a disabled veteran shall provide a copy of the marriage certificate, the veteran's report of separation DD-214, and a letter less than one year old from the veterans' administration indicating the veteran's disability status.
2. When a veteran applies for ~~appointment or employment under subsection 1 to a position that is not being filled through a competitive personnel system~~, the officer, board, or person whose duty it is to ~~appoint or employ~~ an individual to fill the available position shall, ~~except where the veteran has been qualified for the position applied for under a personnel system~~, investigate the qualifications of the veteran. If the veteran is found to possess the qualifications required for the position applied for, whether educational or by way of prior experience, and is physically and mentally able to perform the duties of the position applied for, the officer, board, or person shall ~~appoint or employ~~ the veteran. A disabled veteran is entitled to a preference superior to that given other veterans under this section, which preference must be

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<sup>90</sup> Section 37-19.1-02 was also amended by section 1 of Senate Bill No. 2211, chapter 263.

accorded in the manner provided in this section. If the group of eligible individuals includes either veterans or disabled veterans, the employing authority of that particular agency or governmental agency shall make a selection for the available position as follows:

- a. A disabled veteran is first entitled to the position and, in the absence of justifiable cause, documented in writing, for not making that selection, must be so employed. If the list includes two or more disabled veterans, then the employing authority shall fill the position from the group of eligible individuals to be considered. The employing authority may further inquire into the qualifications of each eligible individual from within that group through means including interviews, background checks, and skills testing. A disabled veteran from the group of eligible individuals is first entitled to the position and, in the absence of justifiable cause, documented in writing, for not making that selection, must be so employed.
  - b. If the group of eligible individuals does not include one or more disabled veterans and consists only of veterans, then the employing authority shall fill the position from the group of eligible individuals to be considered. The employing authority may further inquire into the qualifications of each eligible individual from within that group through means including interviews, background checks, and skills testing. A veteran from the group of eligible individuals is first entitled to the position and, in the absence of justifiable cause, documented in writing, for not making that selection, must be so employed.
  - c. If the group of eligible individuals includes nonveterans and veterans, but not disabled veterans, then the employing authority shall fill the position from the group of eligible individuals to be considered. The employing authority may further inquire into the qualifications of each eligible individual from within that group through means including interviews, background checks, and skills testing. A veteran from the group of eligible individuals is first entitled to the position and must be employed unless there is justifiable cause that is documented in writing for not employing that veteran.
3. ~~A disabled veteran is entitled to a preference superior to that given other veterans under this section, which preference must be accorded in the manner provided in this section.~~
  4. ~~Notwithstanding the preference provisions in subsections 1, 2, and 3, public employment preference for veterans by agencies filling positions through a personnel system are governed by the following: When a veteran applies for employment to a position that is being filled through a competitive personnel system, the officer, board, or person whose duty it is to employ an individual to fill the available position shall investigate the qualifications of the veteran. If the veteran is found to possess the qualifications required for the position applied for, whether educational or by way of prior experience, and is physically and mentally able to perform the duties of the position applied for, the officer, board, or person shall employ the following:~~
    - a. No distinction or discrimination may be made in the administration of the competitive personnel system examination because the applicant may be a veteran.

- b. ~~Upon completion of the examination with a passing grade, the applicant must be informed of a veteran's rights to employment preference as hereinafter provided.~~
- e. ~~The applicant must be required to furnish proof of the applicant's status as a veteran and, if disabled, proof of the applicant's disability, as defined herein.~~
- d. ~~Upon receipt of proof required in subdivision e-subsection 1, on a one hundred point scale, the examiner shall add five points for a nondisabled veteran and ten points for a disabled veteran to the examination grade of the applicant. The total is the veteran's examination score. If a scale other than a one hundred point scale is used, the examiner shall add five percent of the scale used for a veteran and ten percent of the scale used for a disabled veteran to the examination grade of the applicant. The total is the veteran's examination score.~~
- e-c. ~~Upon request for the The employing authority shall designate a prescribed number of eligible individuals to be considered from the eligibility registry, the number of eligible individuals must be certified from the top number of eligible individuals and with the certified list of eligible individuals there must also be submitted a statement as to which of those so certified are veterans, disabled veterans, or nonveterans top number of the group of eligible candidates in rank order, from highest to lowest, based on the applicant's final score.~~
- f. ~~If the certified list of eligible individuals includes either veterans or disabled veterans, the appointing or employing authority of that particular agency or governmental agency shall make a selection for the available position as follows:~~
  - (1) ~~A disabled veteran, without regard to the disabled veteran's examination grade, is first entitled to the position and, in the absence of justifiable cause, documented in writing, for not making that selection, must be so appointed or employed. If the list includes two or more disabled veterans, then the one with the highest examination grade is first entitled to the position and, in the absence of justifiable cause, documented in writing, for not making that selection, must be so appointed or employed.~~
  - (2) ~~If the certified list of eligible individuals does not include one or more disabled veterans and consists only of veterans, then the one with the highest examination grade is first entitled to the position and, in the absence of justifiable cause, documented in writing, must be appointed or employed.~~
  - (3) ~~If the certified list of eligible individuals includes nonveterans and veterans, but not disabled veterans, then the one with the highest examination grade, whether a nonveteran or a veteran, is first entitled to the position and, in the absence of justifiable cause, must be so appointed or employed; and if the one with the highest examination grade is a veteran and is not appointed or employed, there must be justifiable cause documented in writing for not making that appointment or employment.~~

d. The employing authority shall fill the position from the group of eligible individuals to be considered. The employing authority may further inquire into the qualifications of each eligible individual from within that group through means including interviews, background checks, and skills testing.

5-4. This section does not apply when the position to be filled is that of a superintendent of schools, teacher, administrative head of a department required by law, or the chief deputy or private secretary of an elected or appointed official, the chancellor and vice chancellors of the board of higher education, presidents or executive deans, vice presidents, assistant to the president, provosts, and instructors of board institutions. Temporary committees and individual or group appointments made by the governor or legislative assembly are also excepted from the provisions of this section. If an exempt position is advertised, the advertisement must state that veterans' preference does not apply to the position being advertised.

5. An employee of a state agency is not eligible for preference when applying for a different job within the same state agency or other state agencies. An employee of a political subdivision is not eligible for preference when applying for a different job within the same political subdivision.

**SECTION 3. AMENDMENT.** Section 37-19.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**37-19.1-03. Preferences to be granted veterans' spouses.**

1. The unremarried spouse of a veteran who died while in service, or later died from a service-connected cause or causes, is entitled, if the person is otherwise qualified, to the ~~appointment~~ or employment preference given to a veteran under section 37-19.1-02 in the manner provided therein.
2. The spouse of a disabled veteran, who ~~is disabled due to a service-connected cause or causes~~ has a one hundred percent service-connected disability as determined by the department of veterans' affairs, or who has an extra-schedular rating to include individual unemployability that brings the veteran's total disability rating to one hundred percent as determined by the department of veterans' affairs, is, if the disabled veteran is unable to exercise the veteran's right to a veteran's employment preference due to the veteran's disability, entitled, if the person is otherwise qualified, to the ~~appointment~~ or employment preference given to a veteran under section 37-19.1-02 in the manner provided therein.

**SECTION 4. AMENDMENT.** Section 37-19.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**37-19.1-04. Refusal to give preference - Retaliatory action or removal - Remedies - Procedures.**

1. If a veteran, or a qualified veteran's spouse, hereafter known as the applicant, is not given the preference provided in section 37-19.1-02 or 37-19.1-03, the applicant, within fifteen calendar days after notification by certified mail that employment has been refused, may request a hearing as provided in subsection 3. The notification from the employer must include the reasons for nonselection, inform the applicant of the right to an appeal hearing, inform the applicant of the requirement that the request for a hearing must be filed by certified mail within fifteen calendar days after the notification, inform the

applicant that a request for an appeal hearing must be made to the commissioner of veterans' affairs at the included commissioner's mailing address, and inform the applicant that if the applicant requests an appeal, the applicant must mail a copy of the request for an appeal hearing to the employer or employing agency. The applicant's request for a hearing must be in writing, must include a copy of the employer's notification that employment has been refused, and must be ~~delivered~~mailed to the commissioner of veterans' affairs by certified mail. A copy of the written request must be mailed to the employer or employing agency by certified mail. The applicant is entitled to immediate employment in the position for which application was originally made, or an equivalent position, together with backpay and benefits from the date the appointment should have been made less amounts otherwise earnable through due diligence, if the hearing officer finds in favor of the applicant.

2. Any person who has exercised the right to an employment preference under this chapter, and who, within one year after exercise of that right:
  - a. Is discharged;
  - b. Has had compensation reduced; or
  - c. Is otherwise subject to action by the employing agency designed to cause the veteran or qualified veteran's spouse to resign or quit employment, is entitled to a hearing if the person believes that the employing agency took any of the above-described action due to the exercise of employment preference. The hearing must be held before a hearing officer as provided in subsection 3. If the hearing officer finds that the employing agency took any of the actions described in subdivision a, b, or c due to the person's exercise of the right to an employment preference, the hearing officer shall order the employing agency to cease and desist from such action or to reinstate the veteran or qualified veteran's spouse. The request for a hearing under this subsection must be in writing addressed to the commissioner of veterans' affairs. The request for a hearing must identify the employer or employing agency that took any action described in subdivision a, b, or c and describe the action taken. A copy of the written request must be mailed to the employer or employing agency. The request, addressed to the commissioner of veterans' affairs and the copy to the employer or employing agency, must be made by certified mail within fifteen calendar days after any action described in subdivision a, b, or c is taken by the employing agency.
3. Within fifteen calendar days after receiving a request from an applicant or person under subsection 1 or 2, the commissioner of veterans' affairs may request the director of the office of administrative hearings to designate a hearing officer to hear the grievance arising under subsection 1 or 2. The commissioner shall notify the employer or employing agency that a request for a hearing has been made. The office of administrative hearings is entitled to be reimbursed by the employer or employing agency for all hearing officer services rendered and expenses incurred in performing these duties. The hearing officer shall hold the hearing within thirty calendar days after the hearing officer request is received by the director of the office of administrative hearings. Notwithstanding the time limitation, the hearing officer may postpone or continue the hearing for good cause, at the request of a party. At the hearing, both parties may be represented by counsel. If the hearing is

requested pursuant to subsection 1, the employing agency has the burden of proving that the veteran or the qualified veteran's spouse did not possess the qualifications required for the position. If the hearing is requested pursuant to subsection 2, the employing agency has the burden of proving that any action which was taken was not taken because of exercise of the right to an employment preference. The hearing officer shall issue findings of fact, conclusions of law, and an order within fifteen calendar days after the hearing is concluded, briefs filed, and arguments closed. The order is binding on both parties, subject to appeal.

4. Any party aggrieved by the findings of fact, conclusions of law, and order of the hearing officer may appeal in the manner provided for in chapter 28-32, except that the appellant need not execute an undertaking.

**SECTION 5. LEGISLATIVE MANAGEMENT VETERANS' PREFERENCE LAWS STUDY.** During the 2011-12 interim, the legislative management shall consider studying the North Dakota veterans' preference laws. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

Approved April 26, 2011  
Filed April 26, 2011

## CHAPTER 263

### SENATE BILL NO. 2211

(Senators Grindberg, Wardner, Robinson)  
(Representatives Hawken, Kreun, Mueller)

AN ACT to amend and reenact subsection 5 of section 37-19.1-02 of the North Dakota Century Code, relating to exemptions to veterans' preference and public employees.

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

<sup>91</sup> **SECTION 1. AMENDMENT.** Subsection 5 of section 37-19.1-02 of the North Dakota Century Code is amended and reenacted as follows:

5. This section does not apply when the position to be filled is that of a superintendent of schools, teacher, or the chief deputy or private secretary of an elected or appointed official; ~~the chancellor and vice chancellors of the board of higher education;~~ and presidents or executive deans, vice presidents, ~~assistant~~ assistants to the president, provosts, ~~and~~ instructors, and athletic team coaches of board institutions. Temporary committees and individual or group appointments made by the governor or legislative assembly are also excepted from the provisions of this section.

Approved April 25, 2011  
Filed April 25, 2011

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<sup>91</sup> Section 37-19.1-02 was also amended by section 2 of Senate Bill No. 2279, chapter 262.



# MINING AND GAS AND OIL PRODUCTION

## CHAPTER 264

### HOUSE BILL NO. 1216

(Representatives DeKrey, Kempenich, Skarphol)  
(Senators Christmann, Wardner, O'Connell)

AN ACT to provide that hydraulic fracturing is an acceptable recovery process in North Dakota; and to declare an emergency.

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

#### **SECTION 1.**

##### **Hydraulic fracturing - Designated as acceptable recovery process.**

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, an acceptable recovery process in this state.

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

Approved April 11, 2011  
Filed April 11, 2011

## CHAPTER 265

### HOUSE BILL NO. 1241

(Representatives Kempenich, Drovdal, Steiner)  
(Senators Andrist, Wardner)

AN ACT to create and enact a new section to chapter 38-11.1 and section 38-11.1-04.1 of the North Dakota Century Code, relating to notice of oil and gas drilling operations and compensation for loss of agricultural production and income caused by oil and gas production; to amend and reenact sections 38-11.1-02, 38-11.1-04, 38-11.1-08, and 47-16-39.1 of the North Dakota Century Code, relating to damage and disruption payments for damages caused by oil and gas production, agreement with offer of settlement, and the obligation to pay oil and gas royalties; to repeal section 38-11.1-05 of the North Dakota Century Code, relating to notice of oil and gas drilling operations; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 38-11.1-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **38-11.1-02. Purpose and interpretation.**

It is the purpose of this chapter to provide the maximum amount of constitutionally permissible protection to surface owners and other persons from the undesirable effects of development of minerals. This chapter is to be interpreted in light of the legislative intent expressed herein. Sections 38-11.1-04 and ~~38-11.1-05~~ 38-11.1-04.1 must be interpreted to benefit surface owners, regardless of whether the mineral estate was separated from the surface estate and regardless of who executed the document which gave the mineral developer the right to conduct drilling operations on the land. Sections 38-11.1-06 through 38-11.1-10 must be interpreted to benefit all persons.

**SECTION 2. AMENDMENT.** Section 38-11.1-04 of the North Dakota Century Code is amended and reenacted as follows:

##### **38-11.1-04. Damage and disruption payments.**

The mineral developer shall pay the surface owner a sum of money equal to the amount of damages sustained by the surface owner and the surface owner's tenant, if any, for ~~loss of agricultural production and income~~, lost land value, lost use of and access to the surface owner's land, and lost value of improvements caused by drilling operations. The amount of damages may be determined by any formula mutually agreeable between the surface owner and the mineral developer. When determining ~~damages~~ damage and disruption payments, consideration must be given to the period of time during which the loss occurs and the surface owner ~~may elect to be paid damages in annual installments over a period of time; except that the surface owner~~ must be compensated for harm caused by exploration only by a single sum payment. The payments contemplated by this section only cover land directly affected by drilling operations. Payments under this section are intended to compensate the surface owner for damage and disruption; any reservation or assignment of such

compensation apart from the surface estate except to a tenant of the surface estate is prohibited. In the absence of an agreement between the surface owner and a tenant as to the division of compensation payable under this section, the tenant is entitled to recover from the surface owner that portion of the compensation attributable to the tenant's share of the damages sustained.

**SECTION 3.** Section 38-11.1-04.1 of the North Dakota Century Code is created and enacted as follows:

**38-11.1-04.1. Notice of operations.**

1. Before the initial entry upon the land for activities that do not disturb the surface, including inspections, staking, surveys, measurements, and general evaluation of proposed routes and sites for oil and gas drilling operations, the mineral developer shall provide at least seven days' notice by registered mail or hand delivery to the surface owner unless waived by mutual agreement of both parties. The notice must include:
  - a. The name, address, telephone number, and, if available, the electronic mail address of the mineral developer or the mineral developer's designee;
  - b. An offer to discuss and agree to consider accommodating any proposed changes to the proposed plan of work and oil and gas operations before commencement of oil and gas operations; and
  - c. A sketch of the approximate location of the proposed drilling site.
2. Except for exploration activities governed by chapter 38-08.1, the mineral developer shall give the surface owner written notice by registered mail or hand delivery of the oil and gas drilling operations contemplated at least twenty days before commencement of drilling operations unless mutually waived by agreement of both parties. If the mineral developer plans to commence drilling operations within twenty days of the termination date of the mineral lease, the required notice under this section may be given at any time before commencement of drilling operations. The notice must include:
  - a. Sufficient disclosure of the plan of work and operations to enable the surface owner to evaluate the effect of drilling operations on the surface owner's use of the property;
  - b. A plat map showing the location of the proposed well; and
  - c. A form prepared by the director of the oil and gas division advising the surface owner of the surface owner's rights and options under this chapter, including the right to request the state department of health to inspect and monitor the well site for the presence of hydrogen sulfide.
3. The notice required by this section must be given to the surface owner at the address shown by the records of the county treasurer's office at the time the notice is given and is deemed to have been received seven days after mailing by registered mail or immediately upon hand delivery.
4. If a mineral developer fails to give notice as provided in this section, the surface owner may seek appropriate relief in the court of proper jurisdiction and may receive punitive as well as actual damages.

**SECTION 4. AMENDMENT.** Section 38-11.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**38-11.1-08. Agreement - Offer of settlement.**

Unless both parties provide otherwise by written agreement, at the time the notice required by ~~section 38-11.1-05~~subsection 2 of section 38-11.1-04.1 is given, the mineral developer shall make a written offer of settlement to the person seeking compensation for damages when the notice required by ~~section 38-11.1-05~~subsection 2 of section 38-11.1-04.1 is given. The person seeking compensation may accept or reject any offer so made.

**SECTION 5.** A new section to chapter 38-11.1 of the North Dakota Century Code is created and enacted as follows:

**Loss of production payments.**

The mineral developer shall pay the surface owner a sum of money equal to the amount of damages sustained by the surface owner and the surface owner's tenant, if any, for loss of agricultural production and income caused by oil and gas production and completion operations. The amount of damages may be determined by any formula mutually agreeable between the surface owner and the mineral developer. When determining damages for loss of production, consideration must be given to the period of time during which the loss occurs and the damages for loss of production must be paid annually unless the surface owner elects to receive a single lump sum payment. Payments under this section are intended to compensate the surface owner for loss of production. Any reservation or assignment of such compensation apart from the surface estate, except to a tenant of the surface estate, is prohibited. In the absence of an agreement between the surface owner and a tenant as to the division of compensation payable under this section, the tenant is entitled to recover from the surface owner that portion of the compensation attributable to the tenant's share of the damages sustained.

**SECTION 6. AMENDMENT.** Section 47-16-39.1 of the North Dakota Century Code is amended and reenacted as follows:

**47-16-39.1. Obligation to pay royalties - Breach.**

The obligation arising under an oil and gas lease to pay oil or gas royalties to the mineral owner or the mineral owner's assignee, or to deliver oil or gas to a purchaser to the credit of the mineral owner or the mineral owner's assignee, or to pay the market value thereof is of the essence in the lease contract, and breach of the obligation may constitute grounds for the cancellation of the lease in cases where it is determined by the court that the equities of the case require cancellation. If the operator under an oil and gas lease fails to pay oil or gas royalties to the mineral owner or the mineral owner's assignee within one hundred fifty days after oil or gas produced under the lease is marketed and cancellation of the lease is not sought or if the operator fails to pay oil or gas royalties to an unleased mineral interest owner within one hundred fifty days ~~from initial~~after oil or gas production is marketed from the unleased mineral interest owner's mineral interest, the operator ~~thereafter~~ shall pay interest on the unpaid royalties, without the requirement that the mineral owner or the mineral owner's assignee request the payment of interest, at the rate of eighteen percent per annum until paid, except that the commissioner of university and school lands may negotiate a rate to be no less than the prime rate as established by the Bank of North Dakota plus four percent per annum with a maximum of eighteen percent per annum, for unpaid royalties on minerals owned or managed by the board

of university and school lands. Provided, that the operator may remit semiannually to a person entitled to royalties the aggregate of six months' monthly royalties where the aggregate amount is less than fifty dollars. The district court for the county in which the oil or gas well is located has jurisdiction over all proceedings brought pursuant to this section. The prevailing party in any proceeding brought pursuant to this section is entitled to recover any court costs and reasonable attorney's fees. This section does not apply when mineral owners or their assignees elect to take their proportionate share of production in kind, in the event of a dispute of title existing that would affect distribution of royalty payments, or when a mineral owner cannot be located after reasonable inquiry by the operator; however, the operator shall make royalty payments to those mineral owners whose title and ownership interest is not in dispute.

**SECTION 7. REPEAL.** Section 38-11.1-05 of the North Dakota Century Code is repealed.

**SECTION 8. EFFECTIVE DATE.** Sections 2 and 5 of this Act become effective for drilling operations commenced after July 31, 2011.

Approved April 25, 2011  
Filed April 25, 2011

# MOTOR VEHICLES

## CHAPTER 266

### SENATE BILL NO. 2287

(Senators Berry, Flakoll, Luick)  
(Representatives Gruchalla, Guggisberg, Porter)

AN ACT to amend and reenact subsection 2 of section 39-01-01 of the North Dakota Century Code, relating to emergency lights on response vehicles.

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

<sup>92</sup> **SECTION 1. AMENDMENT.** Subsection 2 of section 39-01-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Authorized emergency vehicles":
  - a. "Class A" authorized emergency vehicles means:
    - (1) Vehicles of a governmentally owned fire department.
    - (2) Vehicles when operated by or under the control of a police officer having authority to enforce the provisions of this title or by a salaried employee of a municipal police department within the municipality or by a sheriff or deputy sheriff not including special deputy sheriffs, or by the director of the department of corrections and rehabilitation and the director's authorized agents who have successfully completed training in the operation of class A authorized emergency vehicles.
    - (3) Vehicles clearly identifiable as property of the department of corrections and rehabilitation when operated or under the control of the director of the department of corrections and rehabilitation.
    - (4) Ambulances.
    - (5) Vehicles operated by or under the control of the director, district deputy director, or a district deputy game warden of the game and fish department.
    - (6) Vehicles owned or leased by the United States and used for law enforcement purposes.
    - (7) Vehicles designated for the use of the adjutant general or assistant adjutant general in cases of emergency.

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<sup>92</sup> Section 39-01-01 was also amended by section 1 of House Bill No. 1103, chapter 271, and section 1 of House Bill No. 1256, chapter 272.

- (8) Vehicles operated by or under the control of the director of the parks and recreation department.
  - (9) Vehicles operated by or under the control of a licensed railroad police officer and used for law enforcement purposes.
  - (10) Vehicles operated by or under the control of the state forester.
  - (11) Vehicles operated by or under the control of the bureau of criminal investigation and used for law enforcement purposes.
- b. "Class B" authorized emergency vehicles means wreckers and such other emergency vehicles as are authorized by the local authorities.
- c. "Class C" authorized emergency vehicles means:
- (1) Vehicles authorized by the state division of homeland security or local division of emergency management organizations.
  - (2) Vehicles used by volunteer firefighters while performing their assigned disaster and emergency responsibilities.
  - (3) Vehicles, other than ambulances, used by emergency medical services personnel.

Approved April 26, 2011  
Filed April 26, 2011

## CHAPTER 267

### HOUSE BILL NO. 1113

(Transportation Committee)

(At the request of the Department of Transportation)

AN ACT to amend and reenact sections 39-04-10.11 and 39-04-10.12, subsection 3 of section 39-04-10.13, subdivision o of subsection 2 of section 39-04-18, subsection 3 of section 39-04-19, and subsection 4 of section 39-22.3-04 of the North Dakota Century Code, relating to number plates, motor vehicle registration fees and miles tax, and dealer's licenses.

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

**SECTION 1. AMENDMENT.** Section 39-04-10.11 of the North Dakota Century Code is amended and reenacted as follows:

##### **39-04-10.11. Firefighter's association plates.**

The director, in cooperation with the North Dakota firefighter's association, shall design a decorative decal that contains an insignia representing service in the pursuit of firefighting and which is to be placed on a distinctive number plate. On payment of all other fees required under this chapter for registration of the motor vehicle, and payment of an additional annual fee of fifteen dollars for deposit in the highway fund, the applicant is entitled to issuance of the decals and plates. However, the director may not issue the decal and plates to the owner of a passenger motor vehicle or a truck the registered gross weight of which ~~equals or~~ exceeds twenty thousand pounds [9071.84 kilograms]. A registrant is eligible for distinctive number plates under this section if the registrant is a member of the North Dakota firefighter's association. On request of the director, the North Dakota firefighter's association shall certify those members of the North Dakota firefighter's association eligible to receive the decals and plates. On termination of the registrant's eligibility, the registrant shall return the decals and plates to the director, who shall reissue for a fee of not more than five dollars another number plate to which that registrant is entitled under this chapter. The director and the North Dakota firefighter's association shall cooperate in establishing procedures to implement this section.

**SECTION 2. AMENDMENT.** Section 39-04-10.12 of the North Dakota Century Code is amended and reenacted as follows:

##### **39-04-10.12. North Dakota future farmers of America foundation number plates.**

The director shall design a decorative decal that contains the insignia of the North Dakota FFA foundation to be placed on a distinctive number plate. On payment of all other fees required under this chapter for registration of the motor vehicle and payment of an additional fee of ten dollars, the applicant is entitled to issuance of the decals and plates. However, the director may not issue the decals and plates to the owner of a passenger motor vehicle or a truck the registered gross weight of which ~~equals or~~ exceeds twenty thousand pounds [9071.84 kilograms].



**SECTION 3. AMENDMENT.** Subsection 3 of section 39-04-10.13 of the North Dakota Century Code is amended and reenacted as follows:

3. Upon proper application for a plate in the organization number plate program and payment of all other fees required under this chapter for registration of the motor vehicle and payment of an additional annual fee of twenty-five dollars, a qualified applicant is entitled to issuance of a certain organization number plate. However, the director may not issue the plates to the owner of a passenger motor vehicle or a truck the registered gross weight of which ~~equals or~~ exceeds twenty thousand pounds [9071.85 kilograms].

<sup>93</sup> **SECTION 4. AMENDMENT.** Subdivision o of subsection 2 of section 39-04-18 of the North Dakota Century Code is amended and reenacted as follows:

- o. Passenger motor vehicles, house cars, or pickup trucks not exceeding ~~ten~~twenty thousand pounds [~~4535.92~~9071.84 kilograms] registered gross weight owned and operated by a resident who, while serving in the United States armed forces, was a prisoner of war and has received an honorable discharge from the United States armed forces; provided, however, that the vehicles display a distinctive license plate issued by the department upon the payment of five dollars. This exemption also applies to any passenger motor vehicle, house car, or pickup truck not exceeding ~~ten~~twenty thousand pounds [~~4535.92~~9071.84 kilograms] registered gross weight subsequently purchased or acquired by such a former prisoner of war; provided, that the exemption provided by this subdivision is allowed only with respect to one motor vehicle owned by such a former prisoner of war at any one time.

**SECTION 5. AMENDMENT.** Subsection 3 of section 39-04-19 of the North Dakota Century Code is amended and reenacted as follows:

3. Motor vehicles acquired by disabled veterans under the provisions of Public Law 79-663 [38 U.S.C. 3901] are exempt from the payment of state sales or use tax and, if paid, such veterans are entitled to a refund. This exemption also applies to any passenger motor vehicle or pickup truck not exceeding ~~twenty~~twenty-six thousand pounds [~~9071.84~~11793.40 kilograms] registered gross weight but shall apply to no more than two such motor vehicles owned by a disabled veteran at any one time.

**SECTION 6. AMENDMENT.** Subsection 4 of section 39-22.3-04 of the North Dakota Century Code is amended and reenacted as follows:

4. For having violated any law relating to the sale, distribution, or financing of ~~motorcycles~~motor-powered recreational vehicles.

Approved April 11, 2011  
Filed April 11, 2011

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<sup>93</sup> Section 39-04-18 was also amended by section 1 of Senate Bill No. 2207, chapter 268, and section 2 of House Bill No. 1217, chapter 447.

## CHAPTER 268

### SENATE BILL NO. 2207

(Senators Lyson, Wardner)  
(Representatives Kempenich, Rust)

AN ACT to create and enact section 39-04-18.2 and a new subsection to section 57-40.3-04 of the North Dakota Century Code, relating to temporary motor vehicle registration and excise tax; to amend and reenact subdivisions c and e of subsection 2 of section 39-04-18, subsection 2 of section 39-06.1-06, and section 39-06.1-08 of the North Dakota Century Code, relating to motor vehicle registration; to provide legislative intent; and to declare an emergency.

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

<sup>94</sup> **SECTION 1. AMENDMENT.** Subdivisions c and e of subsection 2 of section 39-04-18 of the North Dakota Century Code are amended and reenacted as follows:

- c. Motor vehicles registered in any other state or territory when coming into this state a distance not exceeding twenty miles [32.19 kilometers]; provided, however, that such motor vehicles have displayed thereon the current license plates issued by the state or territory in which they are registered and provided further that the owners or operators thereof are not residents of this state ~~for any purpose and are not gainfully employed or stationed in this state.~~ Nor may such vehicles be required to pay any other tax, and no registration fee or tax may be required when such vehicles do not leave the incorporated limits of any city while in the state of North Dakota within a zone circumscribed by a line running parallel to the corporate limits of any city or contiguous cities and twenty miles [32.19 kilometers] distant therefrom. This section does not prevent trucks from coming into the state such distance as shall be necessary to reach the nearest railway shipping station. For purposes of this subdivision, an individual is a resident of this state if the individual is gainfully employed or engages in any trade, profession, or occupation within this state and owns, leases, or rents a place of residence or otherwise lives within this state for the purposes of employment, or regardless of domicile or any other circumstance, remains in this state for a period of at least ninety consecutive days. For purposes of this subdivision, a resident does not include a student at a university, college, or technical school in this state or a daily commuter from another jurisdiction if that jurisdiction exempts the vehicle of a daily commuter from this state from registration in that jurisdiction under a reciprocity agreement.
- e. Passenger motor vehicles registered in any other state or territory; provided, however, that such motor vehicles have displayed thereon the current license plates issued by the state or territory in which they are registered and provided further that the owners or operators thereof are not residents of this state ~~for any purpose and are not gainfully employed or stationed in this state.~~ For purposes of this subdivision, an individual is

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<sup>94</sup> Section 39-04-18 was also amended by section 4 of House Bill No. 1113, chapter 267, and section 2 of House Bill No. 1217, chapter 447.

a resident of this state if the individual is gainfully employed or engages in any trade, profession, or occupation within this state and owns, leases, or rents a place of residence or otherwise lives within this state for the purposes of employment, or regardless of domicile or any other circumstance, remains in this state for a period of at least ninety consecutive days. For purposes of this subdivision, a resident does not include a student at a university, college, or technical school in this state or a daily commuter from another jurisdiction if that jurisdiction exempts the vehicle of a daily commuter from this state from registration in that jurisdiction under a reciprocity agreement.

**SECTION 2.** Section 39-04-18.2 of the North Dakota Century Code is created and enacted as follows:

**39-04-18.2. Temporary motor vehicle registration - Fees.**

1. Any owner, lessee, or operator of a motor vehicle who is employed in this state on a temporary or full-time basis may choose to purchase a temporary registration permit in lieu of registering the vehicle pursuant to section 39-04-18, if the vehicle displays a valid registration and license plate from another jurisdiction and is properly insured. Application for the temporary registration permit must be made in the manner and form prescribed by the department. The temporary registration permit must bear a distinctive number assigned to the vehicle and an expiration date. At all times the operator shall ensure that the temporary registration permit is displayed and clearly visible on the vehicle in a manner prescribed by the department. Motor vehicles temporarily registered under this section may be registered without a title transfer or imposition of motor vehicle excise tax. The operator shall keep evidence of registration from the other jurisdiction in the motor vehicle and provide evidence of registration to a law enforcement officer or the department, upon request.
2. Motor vehicles temporarily registered in this state must be furnished a permit as follows:
  - a. Passenger vehicles, pickups, vans, and trucks not exceeding twenty thousand registered gross weight pounds [9071.84 kilograms] temporarily registered in this state must be furnished a permit upon payment of sixty dollars for six months or one hundred twenty dollars for twelve months of required registration.
  - b. Trucks or combinations of trucks and trailers weighing more than twenty thousand registered gross weight pounds [9071.84 kilograms] temporarily registered in this state must be furnished a permit upon payment of the following fees:

<u>Weight</u>	<u>Six-Month Fee</u>	<u>Twelve-Month Fee</u>
<u>20,001 - 42,000</u>	<u>\$220</u>	<u>\$440</u>
<u>42,001 - 62,000</u>	<u>\$380</u>	<u>\$760</u>
<u>62,001 - 82,000</u>	<u>\$530</u>	<u>\$1,060</u>
<u>82,001 - 105,500</u>	<u>\$900</u>	<u>\$1,800</u>

- c. Motorcycles temporarily registered in this state must be furnished a permit upon payment of thirty dollars for six months or sixty dollars for twelve months.

- d. An additional fee of ten dollars applies to each temporary registration permit.

<sup>95</sup> **SECTION 3. AMENDMENT.** Subsection 2 of section 39-06.1-06 of the North Dakota Century Code is amended and reenacted as follows:

2. For a moving violation as defined in section 39-06.1-09, a fee of twenty dollars, except for:
  - a. A violation of section 39-10-26, 39-10-26.2, 39-10-41, 39-10-42, 39-10-46, or 39-10-46.1, a fee of fifty dollars.
  - b. A violation of section 39-10-05 involving failure to yield to a pedestrian or subsection 1 of section 39-10-28, a fee of fifty dollars.
  - c. A violation of section 39-21-41.2, a fee of twenty-five dollars.
  - d. A violation of subsection 1 of section 39-12-02, 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.

**SECTION 4. 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 6 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.

<sup>96</sup> **SECTION 5.** A new subsection to section 57-40.3-04 of the North Dakota Century Code is created and enacted as follows:

Motor vehicles registered in another state or territory, if the motor vehicle is registered in this state under section 39-04-18.2.

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<sup>95</sup> Section 39-06.1-06 was also amended by section 3 of House Bill No. 1188, chapter 192, section 1 of Senate Bill No. 2157, chapter 280, and section 1 of House Bill No. 1195, chapter 279.

<sup>96</sup> Section 57-40.3-04 was also amended by section 1 of House Bill No. 1153, chapter 474, and section 4 of House Bill No. 1217, chapter 447.

**SECTION 6. LEGISLATIVE INTENT - TEMPORARY MOTOR VEHICLE REGISTRATION REQUIREMENTS - MARKETING AND AWARENESS CAMPAIGN.**

It is the intent of the sixty-second legislative assembly that the department of transportation not incur more than \$50,000 of expenses for a marketing and awareness campaign for temporary motor vehicle registration requirements, for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 7. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 27, 2011  
Filed April 27, 2011

## CHAPTER 269

### SENATE BILL NO. 2188

(Senators G. Lee, Oehlke, Wanzek)  
(Representatives Ruby, N. Johnson, Delmore)

AN ACT to amend and reenact sections 39-05-02.2 and 39-05-03 of the North Dakota Century Code, relating to exclusions from the certificate of title requirement for vehicles regularly engaged in interstate transportation of persons or property.

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

**SECTION 1. AMENDMENT.** Section 39-05-02.2 of the North Dakota Century Code is amended and reenacted as follows:

##### **39-05-02.2. Exclusions from the certificate of title requirement.**

No certificate of title need be obtained for:

1. A vehicle owned by the United States unless it is registered in this state.
2. A vehicle owned by a manufacturer or dealer and held for sale, even though incidentally moved on the highway or used for purposes of testing or demonstration, or a vehicle used by a manufacturer solely for testing.
3. A vehicle owned by a nonresident of this state and not required by law to be registered in this state.
4. A vehicle regularly engaged in interstate transportation of persons or property that is registered in accordance with the international registration plan and for which a currently effective certificate of title has been issued in another state that has a reciprocal excise tax agreement with this state.
5. A vehicle moved solely by human or animal power.
6. Implements of husbandry.
7. Special mobile equipment.
8. A self-propelled invalid wheelchair or invalid tricycle.
9. Any vehicle which is driven or moved upon a highway only for the purpose of crossing the highway from one property to another. The vehicle shall cross the highway at an angle of approximately ninety degrees to the direction of the highway.
10. Other vehicles not required to be registered in this state or not required to display distinctive plates.
11. A manufactured home with respect to which the requirements of subsections 1 through 3 of section 39-05-35, as applicable, have been satisfied.

**SECTION 2. AMENDMENT.** Section 39-05-03 of the North Dakota Century Code is amended and reenacted as follows:

**39-05-03. Department not to license vehicle until application is made for a certificate of title.**

The department may not register or renew the registration for license of any vehicle unless and until an application is made for an official certificate of title for the vehicle, or unless satisfactory evidence is presented that a certificate of title for the vehicle has been issued previously to the lienholder or owner by the department or when engaged in interstate commerce and registered in accordance with the international registration plan the vehicle is titled in another state.

Approved April 19, 2011  
Filed April 19, 2011

## CHAPTER 270

### SENATE BILL NO. 2165

(Senator Nodland)  
(Representative Ruby)

AN ACT to amend and reenact subsection 9 of section 39-05-22 of the North Dakota Century Code, relating to the department of motor vehicle record retention.

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

**SECTION 1. AMENDMENT.** Subsection 9 of section 39-05-22 of the North Dakota Century Code is amended and reenacted as follows:

9. Such file of surrendered certificates of title and the records referred to in subsections 6, 7, and 8 must be permanently maintained ~~for a period of five years or for such further time that the director may determine.~~

Approved April 25, 2011  
Filed April 25, 2011



## CHAPTER 271

### HOUSE BILL NO. 1103

(Transportation Committee)

(At the request of the Department of Transportation)

AN ACT to create and enact a new subsection to section 39-01-01 and section 39-06-01.2 of the North Dakota Century Code, relating to definitions and anatomical gifting; and to amend and reenact subsection 1 of section 39-06-01, subsection 1 of section 39-06-01.1, subsection 1 of section 39-06-03.1, subsection 2 of section 39-06-07, section 39-06-07.2, subsection 1 of section 39-06-14, sections 39-06-24, 39-06-35, 39-06-36, and 39-06-40, subsection 3.1 of section 39-06.1-10, subsection 2 of section 39-06.2-10, sections 39-06.2-10.3 and 39-10.2-06, subsection 2 of section 39-16.1-07, subsection 2 of section 39-27-05, and subsections 2 and 5 of section 39-27-06 of the North Dakota Century Code, relating to nondriver photo identification, operator's licenses, and motorcycle safety and body requirements.

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

<sup>97</sup> **SECTION 1.** A new subsection to section 39-01-01 of the North Dakota Century Code is created and enacted as follows:

"Licensed health care provider" means doctor of medicine, doctor of osteopathy, doctor of chiropractic, optometrist, psychologist, advanced practice registered nurse, or physician assistant who is licensed, certified, or registered in accordance with laws and regulations in this or another state.

**SECTION 2. AMENDMENT.** Subsection 1 of section 39-06-01 of the North Dakota Century Code is amended and reenacted as follows:

1. A person, unless expressly exempted in this section, may not drive any 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 unless the person has a valid license as an operator under the provisions of this chapter or a temporary operator's permit issued under chapter 39-20. A person may not receive an operator's license unless and until that person surrenders to the director all operator's licenses and permits issued to the person by any jurisdiction. When a license issued by another jurisdiction is surrendered, the director shall notify the issuing jurisdiction of its surrender. A person may not have more than one valid operator's license at any time.

**SECTION 3. AMENDMENT.** Subsection 1 of section 39-06-01.1 of the North Dakota Century Code is amended and reenacted as follows:

1. The director shall cancel the permit or license to operate a motor vehicle of an individual who has committed acts resulting in an accumulated point total in excess of five points as provided for a violation under section 39-06.1-10 or

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<sup>97</sup> Section 39-01-01 was also amended by section 1 of House Bill No. 1256, chapter 272, and section 1 of Senate Bill No. 2287, chapter 266.

has committed an alcohol-related offense or a drug-related offense while operating a motor vehicle, if:

- a. The acts or offenses were committed while the individual was a minor; and
- b. The individual admitted the violation, was found to have committed the violation by the official having jurisdiction, or pled guilty to, was found guilty of, or adjudicated to have committed the offense.

**SECTION 4.** Section 39-06-01.2 of the North Dakota Century Code is created and enacted as follows:

**39-06-01.2. Anatomical gifting.**

The application for nondriver photo identification cards and driver's licenses issued to operators must include a statement making an anatomical gift and provide for the voluntary identification of the applicant as a donor under chapter 23-06.6. Voluntary identification of the applicant as a donor under chapter 23-06.6 also may be completed by an online registry approved by the director. If the applicant's donor intention is made by the online registry, the intention must be recorded on the applicant's record. The intention is not required on the identification card or license unless a duplicate card is obtained or at the time of renewal. The department may not be held civilly or criminally liable for any act or omission in implementing and maintaining the online registration of donors.

**SECTION 5. AMENDMENT.** Subsection 1 of section 39-06-03.1 of the North Dakota Century Code is amended and reenacted as follows:

1. The director shall issue a nondriver color photo identification card to any North Dakota resident who fulfills the requirements of this section. An application for an identification card must be made on a form furnished by the director. Within thirty days from receipt of a complete application that includes the applicant's social security number, unless the applicant is a nonimmigrant who is not eligible for a social security number, the director shall determine whether to issue and, if appropriate, issue a nondriver photo identification card to an applicant. ~~The application must provide for the voluntary identification of the applicant as a donor under chapter 23-06.6. If requested on the identification card application, the identification card issued by the director must include a statement making an anatomical gift under chapter 23-06.6. Voluntary identification of the applicant as a donor under chapter 23-06.6 also may be completed by an online registry approved by the director. If the applicant's donor intention is made by the online registry, the intention must be recorded on the applicant's record. The intention is not required on the identification card unless a duplicate card is obtained or at the time of renewal. The department may not be held civilly or criminally liable for any act or omission in implementing and maintaining the online registration of donors.~~ If the person is under the age of eighteen or at least the age of eighteen and under the age of twenty-one, the photo must be against the same color background required on a motor vehicle operator's license for an operator of that age. Subject to subsection 1 of section 39-06-19, identification cards expire eight years from the date of issue and may be renewed. The application must contain such other information as the director may require to improve identity security. The director may require an applicant for an identification card to provide a social security card and proof of residence address.

**SECTION 6. AMENDMENT.** Subsection 2 of section 39-06-07 of the North Dakota Century Code is amended and reenacted as follows:

2. Every application must state the full name, date of birth, sex, social security number, unless the applicant is a nonimmigrant who is not eligible for a social security number, residence and mailing address, and briefly describe the applicant. In signing the application the applicant is deemed to have certified that all information contained on the application is true and correct. The application must be accompanied by the proper fee. ~~The application must also provide for the voluntary identification of the applicant as a donor under the provisions of chapter 23-06-6.~~ The application must contain such other information as the director may require to improve identity security. The director may require an applicant for a license or instruction permit to provide a social security card and proof of residence address.

<sup>98</sup> **SECTION 7. AMENDMENT.** Section 39-06-07.2 of the North Dakota Century Code is amended and reenacted as follows:

**39-06-07.2. Medical advice - Use by director.**

1. The director is authorized to seek professional medical advice from ~~any physician or optometrist authorized to practice in this state~~ a licensed health care provider and to use that advice in decisions made by the director in regard to the issuance, renewal, suspension, revocation, or cancellation of driver's licenses ~~pursuant to~~ under this chapter. The advice may be received in any manner deemed advisable by the director or the director's authorized agent.
2. In addition to advice sought and received ~~pursuant to~~ under subsection 1, the director may consider information and advice received from an individual applicant's or driver's personal ~~physician or optometrist~~ licensed health care provider. Any examination and report requested by the applicant or driver or required to be taken and provided by the director ~~pursuant to~~ under this chapter must be at the expense of the applicant or driver.
3. Any ~~physician or optometrist~~ licensed health care provider providing advice to the director or director's authorized agent ~~pursuant to~~ under subsection 1 ~~shall~~ does not incur ~~any~~ liability for any opinion, recommendation, or advice provided.
4. Advice and information received by the director or director's authorized agent ~~pursuant to~~ under subsection 1 which relates to an individual applicant or driver is for the confidential use of the director or director's authorized agent in making decisions on the individual's qualifications as a driver, and the information may not be divulged to any person or used in evidence in any trial or proceeding except in matters concerning the individual's qualifications to receive or retain a driver's license.
5. General advice and information received by the director or director's authorized agent ~~pursuant to~~ under this section, in addition to other sources of information, may be used by the director in the adoption of administrative rules concerning medical criteria for driver licensing.

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<sup>98</sup> Section 39-06-07.2 was also amended by section 1 of Senate Bill No. 2143, chapter 273.

<sup>99</sup> **SECTION 8. AMENDMENT.** Subsection 1 of section 39-06-14 of the North Dakota Century Code is amended and reenacted as follows:

1. The director, upon payment of a ten dollar fee, shall issue to every qualified applicant an operator's license as applied for in the form prescribed by the director. The license must bear a distinguishing number assigned to the licensee, a color photograph of the licensee, the full name, date of birth, residence address, and a brief description of the licensee, and either a facsimile of the signature of the licensee or a space upon which the licensee shall write the licensee's usual signature. The director may not issue a distinguishing number that is, contains, can be converted to, or is an encrypted version of the applicant's social security number. If the licensee is under the age of eighteen, the photograph must be against a color border or background that is different from the color used for other licensees. If the licensee is at least the age of eighteen and is under the age of twenty-one, the photograph must be against a color border or background that is different from the color used for other licensees. ~~If requested on the license application, the license issued by the director must include a statement making an anatomical gift under chapter 23-06.6. Voluntary identification of the applicant as a donor under chapter 23-06.6 also may be completed by an online registry approved by the director. If the applicant's donor intention is made by the online registry, the intention must be recorded on the applicant's record. The intention is not required on the license unless a duplicate license is obtained or at the time of renewal. The department may not be held civilly or criminally liable for any act or omission in implementing and maintaining the online registration of donors.~~ No license is valid until it has been signed by the licensee with the licensee's usual signature. For purposes of verification, an officer may require the licensee to write the licensee's signature in the presence of the officer. The director may adopt rules, pursuant to chapter 28-32, relating to the manner in which photographs are to be obtained and placed on operator's licenses. The photograph may be produced by digital imaging or other electronic means and is not a public record.

**SECTION 9. AMENDMENT.** Section 39-06-24 of the North Dakota Century Code is amended and reenacted as follows:

**39-06-24. Authority to cancel licenses.**

The director shall cancel any operator's license, permit, or nondriver photo identification card upon determining that the person is not entitled to the issuance of the document under the laws of this state or that said person failed to give the required or correct information on the application or the fee was in the form of an insufficient fund or no-account check or a credit or debit card in which the transaction was canceled by the applicant before the department received correct payment. The making of a false statement in any application for an operator's license, permit, or nondriver photo identification card, concerning the applicant's age or the prior loss of driving privileges through a cancellation, suspension, revocation, or similar sanction in any state, is grounds for the director to cancel any document or privilege issued on the basis of the application.

**SECTION 10. AMENDMENT.** Section 39-06-35 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>99</sup> Section 39-06-14 was also amended by section 1 of House Bill No. 1109, chapter 274, and section 1 of Senate Bill No. 2244, chapter 275.

### **39-06-35. Period of suspension.**

When the period of suspension imposed under this title ceases, the operator's license or driving privilege that has been suspended may not be returned or reinstated, and remains under suspension, until the operator pays to the director a reinstatement fee of fifty dollars, or twenty-five dollars if the suspension was the result of a suspension under subsection 4, 5, or 7 of section 39-06-03 or subsection 2 of section 39-06-32, or one hundred dollars if the suspension was the result of a violation under section 39-08-01 or chapter 39-20, and, if applicable, until compliance with subsection 3.1 of section 39-06.1-10. Upon payment of the reinstatement fee the license must be returned to the operator. If payment of the reinstatement fee is submitted with a check or a credit or debit card and the operator stops payment on the transaction, the suspension will be reimposed until proper payment has been made to the director. A reinstatement fee is not required for a license to be returned to the operator if the return of the license is due to the findings of a hearing, reexamination of hearing, or court or judicial review under chapter 39-06, 39-06.1, or 39-20.

**SECTION 11. AMENDMENT.** Section 39-06-36 of the North Dakota Century Code is amended and reenacted as follows:

### **39-06-36. Restoration of revoked licenses.**

Any person whose license or privilege to drive a motor vehicle on the public highways has been revoked is not entitled to have such license or privilege renewed or restored unless the revocation was for a cause which has been removed, except that after the expiration of the revocation period such person may make application for a new license as provided by law, but the director may not then issue a new license unless and until the director is satisfied after investigation of the individual's driving records, driving habits, and driving ability of such person that it will be safe to grant the privilege of driving a motor vehicle on the public highways. A person whose license or privilege to drive a motor vehicle has been revoked must pay to the director a revocation reinstatement fee of fifty dollars, or one hundred dollars if the revocation was imposed for violation of subsection 5 of section 39-06-17, section 39-06-31, 39-06-43, or 39-20-04, in addition to any license renewal fee, for issuance of a new license. If payment of a reinstatement fee is submitted with a check or a credit or debit card and the operator stops payment on the transaction, the suspension will be reimposed until proper payment has been made to the director. Until the reinstatement fee is paid the license and privilege to drive a motor vehicle remain under revocation. A reinstatement fee is not required if a revoked license is reinstated due to the findings of a hearing, reexamination of hearing, or court or judicial review as provided under chapter 39-06, 39-06.1, or 39-20.

**SECTION 12. AMENDMENT.** Section 39-06-40 of the North Dakota Century Code is amended and reenacted as follows:

### **39-06-40. Unlawful use of license - Penalty.**

It is a class B misdemeanor for any person:

1. To display or cause or permit to be displayed or have in possession any canceled, revoked, fictitious, or fraudulently altered operator's license, permit, or nondriver photo identification card;
2. To lend one's operator's license, permit, or nondriver photo identification card to any other person or knowingly permit the use thereof by another;

3. To display or represent as one's own any operator's license, permit, or nondriver identification card not issued to that person;
4. To fail or refuse to surrender to the director upon demand any operator's license, permit, or nondriver photo identification card which has been suspended, revoked, or canceled;
5. To permit any unlawful use of an operator's license, permit, or nondriver photo identification card issued to that person; or
6. To use a false or fictitious name in any application for an operator's license, permit, or nondriver photo identification card or to knowingly make a false statement or to conceal a material fact or otherwise commit a fraud in the application.

The director upon receiving a record of conviction or other satisfactory evidence of the violation of this section shall ~~immediately~~ revoke within five days, the person's operator's license, driving privileges, permit, or nondriver photo identification card. The period of revocation is at the discretion of the director, not to exceed six months.

<sup>100</sup> **SECTION 13. AMENDMENT.** Subsection 3.1 of section 39-06.1-10 of the North Dakota Century Code is amended and reenacted as follows:

- 3.1. a. If the director is informed by a court that a person has been convicted of violating section 39-08-01, or equivalent ordinance, the director, subject to the offender's opportunity for hearing under subsection 1, ~~may not restore the operator's license to the offender~~ shall suspend that person's driving privileges until the offender furnishes to the director the written statement of the counselor or instructor of an appropriate licensed addiction treatment program that the offender does not require either an education or treatment program or that the offender has physically attended the prescribed program and has complied with the attendance rules. The director shall send notice to the offender informing the offender of the provisions of this subsection.
- b. If within the seven years preceding the most recent violation of section 39-08-01, or equivalent ordinance, the offender has previously violated section 39-08-01, or equivalent ordinance, at least three times, the ~~director may restore driving privileges to the offender~~ driving privileges shall be suspended and can be restored only after that person has completed addiction treatment through an appropriate licensed addiction treatment program and has had no alcohol-related or drug-related offense for two consecutive years after completion of treatment.

**SECTION 14. AMENDMENT.** Subsection 2 of section 39-06.2-10 of the North Dakota Century Code is amended and reenacted as follows:

2. A person is disqualified for life if convicted of two or more violations of any of the offenses specified in subsection 1, 7, 9, or 11, or any combination of those offenses, arising from two or more separate incidents. Only offenses committed while operating a commercial motor vehicle after July 1, 1989, may be considered in applying this subsection. Only offenses committed while

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<sup>100</sup> Section 39-06.1-10 was also amended by section 6 of House Bill No. 1256, chapter 272.

operating a noncommercial motor vehicle after August 1, 2003, may be considered in applying this subsection.

**SECTION 15. AMENDMENT.** Section 39-06.2-10.3 of the North Dakota Century Code is amended and reenacted as follows:

**39-06.2-10.3. Action following test result for a resident driver.**

If a person submits to a test under section 39-06.2-10.2 and the test shows that person to have an alcohol concentration of at least four 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 commercial motor vehicle, the following procedures apply:

1. When a breath sample test result derived under section 39-20-07 reveals a resident driver to have an alcohol concentration of at least four one-hundredths of one percent by weight, the law enforcement officer shall immediately ~~take possession of the person's commercial driver's license. The law enforcement officer shall~~ issue the driver an out-of-service order as provided for in section 39-06.2-10.9. If the driver then has valid driving privileges, the law enforcement officer must issue to the driver a temporary driver's permit, in accordance with section 39-06.2-10.8.
2. If a test administered under section 39-06.2-10.2 was by a urine or blood sample and the person tested is not a resident of an area in which the law enforcement officer has jurisdiction, the law enforcement officer shall, on receiving the analysis of the sample by the director of the state crime laboratory or the director's designee showing that person had an alcohol concentration of at least four one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that person's reappearance within the officer's jurisdiction or notify a law enforcement agency having jurisdiction where the person lives. On that notification, that law enforcement agency shall immediately ~~take possession of the person's North Dakota commercial driver's license or permit and, within twenty four hours, forward it and a copy of the temporary driver's permit to the halting officer. The law enforcement agency shall also, on taking possession of the person's commercial driver's license,~~ issue to that person a temporary driver's permit according to section 39-06.2-10.8.
3. The halting officer, within five days of the issuance of the temporary driver's permit, shall forward to the director a certified written report in the form required by the director and the person's commercial driver's license taken under subsection 1 or 2. If the person was issued a temporary driver's permit because of the results of a test, the report must show that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a commercial motor vehicle while in violation of section 39-06.2-10.1, that the person was lawfully detained, that the person was tested for alcohol concentration under this chapter, and that the results of the test show that the person had an alcohol concentration of at least four one-hundredths of one percent by weight. In addition to the commercial driver's license and report, the law enforcement officer must forward to the director a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood or urine test for all tests administered at the direction of the officer.

**SECTION 16. AMENDMENT.** Section 39-10.2-06 of the North Dakota Century Code is amended and reenacted as follows:

**39-10.2-06. Equipment for motorcycle riders.**

1. No person under the age of eighteen years may operate or ride upon a motorcycle unless ~~protective headgear, which complies with standards established by the department,~~ a safety helmet meeting United States department of transportation standards is being worn on the head of the operator and rider, except when participating in a lawful parade. If the operator of a motorcycle is required to wear ~~protective headgear,~~ a safety helmet, any passenger must also wear ~~protective headgear,~~ a safety helmet regardless of the age of the passenger.
2. This section does not apply to persons riding within an enclosed cab or on a golf cart.
3. No person may operate a motorcycle if a person under the age of eighteen years is a passenger upon that motorcycle and is not wearing ~~protective headgear,~~ a safety helmet as provided in subsection 1.

**SECTION 17. AMENDMENT.** Subsection 2 of section 39-16.1-07 of the North Dakota Century Code is amended and reenacted as follows:

2. If a person by final order or judgment is convicted of or forfeits any bail or collateral deposited to secure an appearance for trial for any offense requiring the revocation of license, driving or being in actual physical control of a vehicle while under the influence in violation of section 39-08-01 or equivalent ordinance, or operating a motor vehicle upon the highway while the person's license or privilege to drive is under suspension for a violation requiring a license or privilege to drive suspension of at least ninety-one days or revocation, the license or driving privilege must ~~remain~~ be suspended or revoked and no license may be issued or returned to the person, unless the person gives and maintains proof of financial responsibility.

**SECTION 18. AMENDMENT.** Subsection 2 of section 39-27-05 of the North Dakota Century Code is amended and reenacted as follows:

2. Tires on two-wheel motorcycles and the ~~front~~ single tire on the front or rear of a three-wheel motorcycle must have a load capacity rating at least equal to their respective gross axle weight ratings. Each tire on the front or rear axle of a three-wheel motorcycle must have a load capacity rating at least equal to one-half the front or rear axle gross axle weight rating.

**SECTION 19. AMENDMENT.** Subsections 2 and 5 of section 39-27-06 of the North Dakota Century Code are amended and reenacted as follows:

2. The rear wheel of a two-wheel motorcycle must track behind the front wheel within one inch [2.54 centimeters] with both wheels in a vertical plane when the vehicle is operating on a straight course. On a three-wheel motorcycle, the ~~two wheels mounted on the rear axle must have a wheel track distance no less than thirty inches [76.2 centimeters]~~ and the midpoint of the rear wheel track distance must be within one inch [2.54 centimeters] of the ~~front~~ midpoint of the front or rear wheel track distance must be within one inch [2.54 centimeters] of the single front or single rear wheel track when the



vehicle is proceeding on a straight course. The vehicle must be equipped with an adjustment feature that will provide proper wheel tracking.

5. Handlebars must be of sturdy construction, adequate in size to provide proper leverage for steering, and capable of withstanding a minimum force of one hundred pounds [45.36 kilograms] applied to each handgrip in any direction. Handlebar grips may not be located above the shoulder height of the seated operator ~~and must be capable of vertical adjustment~~. The handlebars must provide a minimum of eighteen inches [45.72 centimeters] between grip after final assembly.

Approved April 27, 2011  
Filed April 27, 2011

## CHAPTER 272

### HOUSE BILL NO. 1256

(Representatives Keiser, Dahl, Nathe, Ruby, Gruchalla)

AN ACT to create and enact a new subsection to section 39-01-01, a new paragraph to subdivision b of subsection 3 of section 39-06.1-10, and a new section to chapter 39-08 of the North Dakota Century Code, relating to demerit points and using an electronic communication device; to amend and reenact subsection 1 of section 39-06-03 and sections 39-06-04, 39-06-17, and 39-06.1-09 of the North Dakota Century Code, relating to a graduated operator's license and a moving violation; and to provide for application.

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

<sup>101</sup> **SECTION 1.** A new subsection to section 39-01-01 of the North Dakota Century Code is created and enacted as follows:

"Electronic communication device" means an electronic device, including a wireless telephone, personal digital assistant, a portable or mobile computer or other device, and video display equipment. The term does not include a global positioning system or navigation system or a device that is physically or electronically integrated into the motor vehicle.

**SECTION 2. AMENDMENT.** Subsection 1 of section 39-06-03 of the North Dakota Century Code is amended and reenacted as follows:

1. To any person who is under the age of sixteen years, except that the director may issue a restricted permit or license ~~as hereinafter provided in~~ under sections 39-06-05 and 39-06-17 to any person who is less than sixteen years of age.

**SECTION 3. AMENDMENT.** Section 39-06-04 of the North Dakota Century Code is amended and reenacted as follows:

#### **39-06-04. Instruction permit.**

1. Any ~~person~~ resident of this state who is at least fourteen years of age may apply to the director for ~~an~~ a class D instruction permit.
2. The director may issue ~~to the applicant an~~ a class D instruction permit that entitles the applicant while having ~~such~~ the permit in the permittee's immediate possession to drive a motor vehicle upon the public highways ~~for a period of one year when,~~ if the individual:
  - a. Has successfully passed a standard written rules of the road knowledge test prescribed by the director;
  - b. Has successfully passed a vision examination; and

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<sup>101</sup> Section 39-01-01 was also amended by section 1 of House Bill No. 1103, chapter 271, and section 1 of Senate Bill No. 2287, chapter 266.

- c. Has the written approval of the individual's parent or legal guardian.
3. The permittee must be accompanied by a licensed operator who holds a license corresponding to the vehicle the permittee operates, who is at least eighteen years of age, who has had at least three years of driving experience, and who is occupying a seat beside the driver. An individual other than the supervising driver and the permitholder may not be in the front seat unless the vehicle has only a front seat, in which case, the supervising driver must be seated next to the permitholder. ~~Persons holding an instruction permit for the operation of a motorcycle shall operate the motorcycle only during hours when the use of headlights is not required pursuant to section 39-21-01, and may not carry or transport any passenger. Any instruction permit may be renewed or a new permit issued for an additional period.~~
  4. An individual who is not yet eighteen years of age is not eligible for a license until that ~~person~~ individual has had an instruction permit issued for at least six months or at least twelve months if under the age of sixteen. The director may recognize an instruction permit issued by another jurisdiction in computing the six-month or twelve-month instructional period.
  5. The permittee may not operate an electronic communication device to talk, compose, read, or send an electronic message while operating a motor vehicle that is in motion unless the sole purpose of operating the device is to obtain emergency assistance, to prevent a crime about to be committed, or in the reasonable belief that an individual's life or safety is in danger.
  6. A resident of this state who is at least fourteen years of age may apply to the director for a class M learner's permit under section 39-06-14. An individual holding a class M learner's permit for the operation of a motorcycle may not operate the motorcycle during the hours when the use of headlights are required under section 39-21-01 or carry or transport any passenger. Any learner's permit may be renewed or a new permit issued for an additional period.
  7. The director may issue a commercial driver's instruction permit under section 39-06.2-07.

<sup>102</sup> **SECTION 4. AMENDMENT.** Section 39-06-17 of the North Dakota Century Code is amended and reenacted as follows:

**39-06-17. Restricted licenses - Penalty for violation.**

1. The director, upon issuing an operator's license or a temporary restricted operator's license pursuant to section 39-06.1-11, has authority to impose restrictions suitable to the licensee's driving ability with respect to the type of or special mechanical control devices required on a motor vehicle which the licensee may operate or such other restrictions applicable to the licensee as the director may determine to be appropriate to assure the safe operation of a motor vehicle by the licensee.
2. The director may either issue a special restricted license or may ~~set forth~~ suchstate the restrictions upon the usual license form. ~~TheIn the same~~

<sup>102</sup> Section 39-06-17 was also amended by section 1 of Senate Bill No. 2346, chapter 276.

~~manner, the~~ director shall ~~likewise~~ restrict licenses ~~pursuant to the requirements of~~ under section 39-16.1-09.

3. A restricted operator's license or permit to operate the parent's or guardian's automobile, or an automobile which is equipped with dual controls and while accompanied by a qualified instructor, may be issued to any child, who is at least fourteen years of age, and otherwise qualified, upon the written recommendation of the parent or guardian. A child may operate an automobile that is not the parent's or guardian's to take the road test. No operator's license may be issued until the child, accompanied by the parent or guardian, appears in person and satisfies the director that:
  - a. The child is at least fourteen years of age.
  - b. The child is qualified to operate an automobile safely.
  - c. It is necessary for the child to drive the parent's or guardian's automobile without being accompanied by an adult.
  - d. The child has:
    - (1) ~~Completed~~Successfully completed an approved driver's education course that includes a course of classroom instruction and a course of behind-the-wheel instruction acceptable to the director; or
    - (2) Successfully completed a course at an approved commercial driver training school.
  - e. The child has accumulated a minimum of fifty hours of supervised, behind-the-wheel driving experience in various driving conditions and situations that include night driving; driving on gravel, dirt, or aggregate surface road; driving in both rural and urban conditions; and winter driving conditions.

The parent or guardian at all times is responsible for any and all damages growing out of the negligent operation of a motor vehicle by any such child. The provisions of this subsection do not authorize the child to drive a commercial truck, motorbus, or taxicab except the holder of a class D license, fourteen or fifteen years of age, may drive a farm motor vehicle having a gross weight of fifty thousand pounds [22679.62 kilograms] when used to transport agricultural products, farm machinery, or farm supplies to or from a farm when so operated within one hundred fifty miles [241.40 kilometers] of the driver's farm.

4. ~~The director may upon~~Upon receiving satisfactory evidence of any violation of the restrictions of ~~such a~~ license, ~~the director may~~ suspend or revoke the ~~same~~ license but the licensee is entitled to a hearing as upon a suspension or revocation under this chapter.
5. It is a class B misdemeanor for any person to operate a motor vehicle in any manner in violation of the restrictions imposed in a restricted license issued to that person other than restrictions imposed under subsection 6. If the restricted license was issued under section 39-06.1-11 and the underlying suspension was imposed for a violation of section 39-08-01 or equivalent ordinance, or is governed by chapter 39-20, punishment is as provided in

subsection 2 of section 39-06-42 and upon receiving notice of the conviction the director shall revoke, without opportunity for hearing, the licensee's restricted license and shall extend the underlying suspension for a like period of not more than one year. The director may not issue a restricted license for the extended period of suspension imposed under this subsection. If the conviction referred to in this section is reversed by an appellate court, the director shall restore the person to the status held by the person prior to the conviction, including restoration of driving privileges if appropriate.

6. A restricted license issued under subsection 3 to a child at least fourteen years of age to operate a parent's or guardian's automobile authorizes the licenseholder to drive the type or class of motor vehicle specified on the restricted license only under the following conditions:
  - a. A restricted licenseholder must be in possession of the license while operating the motor vehicle.
  - b. An individual holding a restricted driver's license driving a motor vehicle may not carry more passengers than the vehicle manufacturer's suggested passenger capacity.
  - c. An individual holding a restricted driver's license driving a motor vehicle may not operate an electronic communication device to talk, compose, read, or send an electronic message while operating a motor vehicle that is in motion unless the sole purpose of operating the device is to obtain emergency assistance, to prevent a crime about to be committed, or in the reasonable belief that an individual's life or safety is in danger.
  - d. An individual holding a restricted driver's license may not operate a motor vehicle between the later of sunset or nine p.m. and five a.m. unless a parent, legal guardian, or an individual eighteen years of age or older is in the front seat of the motor vehicle or the motor vehicle is being driven directly to or from work, an official school activity, or a religious activity.

<sup>103</sup> **SECTION 5. AMENDMENT.** Section 39-06.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**39-06.1-09. Moving violation defined.**

For the purposes of sections 39-06.1-06 and 39-06.1-13, a "moving violation" means a violation of section 39-04-22, subsection 1 of section 39-04-37, section 39-04-55, 39-06-01, 39-06-14, 39-06-16, section 7 of this Act, 39-09-04.1, 39-09-09, subsection 1 of section 39-12-02, sections 39-12-04, 39-12-05, 39-12-06, 39-12-09, 39-24-02, or 39-24-09, except subdivisions b and c of subsection 5, or equivalent ordinances; or a violation of the provisions of chapter 39-10, 39-10.2, or 39-21, or equivalent ordinances, except subsection 5 of section 39-10-26, sections 39-21-44 and 39-21-45.1, subsections 2 and 3 of section 39-21-46, and those sections within those chapters which are specifically listed in subsection 1 of section 39-06.1-08.

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<sup>103</sup> Section 39-06.1-09 was also amended by section 2 of House Bill No. 1195, chapter 279.

<sup>104</sup> **SECTION 6.** A new paragraph to subdivision b of subsection 3 of section 39-06.1-10 of the North Dakota Century Code is created and enacted as follows:

Driving in violation of the conditions of an instruction permit 2 points

**SECTION 7.** A new section to chapter 39-08 of the North Dakota Century Code is created and enacted as follows:

**Use of an electronic communication device by minor prohibited.**

An individual at least sixteen and under eighteen years of age who has been issued a class D license may not operate an electronic communication device to talk, compose, read, or send an electronic message while operating a motor vehicle that is in motion unless the sole purpose of operating the device is to obtain emergency assistance, to prevent a crime about to be committed, or in the reasonable belief that an individual's life or safety is in danger.

**SECTION 8. APPLICATION.** This Act applies to permits and licenses issued after January 1, 2012, and does not effect a valid permit or license issued before the effective date of this Act.

Approved April 26, 2011  
Filed April 26, 2011

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<sup>104</sup> Section 39-06.1-10 was also amended by section 13 of House Bill No. 1103, chapter 271.

## CHAPTER 273

### SENATE BILL NO. 2143

(Senators J. Lee, Uglem, Warner)  
(Representatives Delmore, Kreidt, Trottier)

AN ACT to amend and reenact section 39-06-07.2 of the North Dakota Century Code, relating to use of medical advice by the director of the department of transportation.

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

<sup>105</sup> **SECTION 1. AMENDMENT.** Section 39-06-07.2 of the North Dakota Century Code is amended and reenacted as follows:

#### **39-06-07.2. Medical advice - Use by director - Definition.**

1. The director is authorized to seek professional medical advice from ~~any physician or optometrist authorized to practice in this state~~ a licensed medical care provider and to use that advice in decisions made by the director in regard to the issuance, renewal, suspension, revocation, or cancellation of driver's licenses ~~pursuant to~~ under this chapter. The advice may be received in any manner deemed advisable by the director or the director's authorized agent.
2. In addition to advice sought and received ~~pursuant to~~ under subsection 1, the director may consider information and advice received from an individual applicant's or driver's ~~personal physician or optometrist~~ licensed medical care provider. Any examination and report requested by the applicant or driver or required to be taken and provided by the director ~~pursuant to~~ under this chapter must be at the expense of the applicant or driver.
3. Any ~~physician or optometrist~~ licensed medical care provider providing advice to the director or director's authorized agent ~~pursuant to~~ under subsection 1 ~~shall incur no~~ does not incur any liability for any opinion, recommendation, or advice provided.
4. Advice and information received by the director or director's authorized agent ~~pursuant to~~ under subsection 1 which relates to an individual applicant or driver is for the confidential use of the director or director's authorized agent in making decisions on the individual's qualifications as a driver, and the information may not be divulged to any person or used in evidence in any trial or proceeding except in matters concerning the individual's qualifications to receive or retain a driver's license.
5. General advice and information received by the director or director's authorized agent ~~pursuant to~~ under this section, in addition to other sources of information, may be used by the director in the adoption of administrative rules concerning medical criteria for driver licensing.

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<sup>105</sup> Section 39-06-07.2 was also amended by section 7 of House Bill No. 1103, chapter 271.

6. As used in this section, "licensed medical care provider" means doctor of medicine, doctor of osteopathy, doctor of chiropractic, optometrist, psychologist, advanced practice registered nurse, or physician assistant, who is licensed, certified, or registered in accordance with laws and regulations in this or another state.

Approved April 25, 2011

Filed April 25, 2011



## CHAPTER 274

### HOUSE BILL NO. 1109

(Transportation Committee)

(At the request of the Department of Transportation)

AN ACT to amend and reenact subsection 1 of section 39-06-14 and subsection 1 of section 39-06-19 of the North Dakota Century Code, relating to driver's license renewal dates and fees.

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

<sup>106</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 39-06-14 of the North Dakota Century Code is amended and reenacted as follows:

1. The director, upon payment of a ~~ten~~<sup>fifteen</sup> dollar fee, shall issue to every qualified applicant an operator's license as applied for in the form prescribed by the director. The license must bear a distinguishing number assigned to the licensee, a color photograph of the licensee, the full name, date of birth, residence address, and a brief description of the licensee, and either a facsimile of the signature of the licensee or a space upon which the licensee shall write the licensee's usual signature. The director may not issue a distinguishing number that is, contains, can be converted to, or is an encrypted version of the applicant's social security number. If the licensee is under the age of eighteen, the photograph must be against a color border or background that is different from the color used for other licensees. If the licensee is at least the age of eighteen and is under the age of twenty-one, the photograph must be against a color border or background that is different from the color used for other licensees. If requested on the license application, the license issued by the director must include a statement making an anatomical gift under chapter 23-06.6. Voluntary identification of the applicant as a donor under chapter 23-06.6 also may be completed by an online registry approved by the director. If the applicant's donor intention is made by the online registry, the intention must be recorded on the applicant's record. The intention is not required on the license unless a duplicate license is obtained or at the time of renewal. The department may not be held civilly or criminally liable for any act or omission in implementing and maintaining the online registration of donors. No license is valid until it has been signed by the licensee with the licensee's usual signature. For purposes of verification, an officer may require the licensee to write the licensee's signature in the presence of the officer. The director may adopt rules, pursuant to chapter 28-32, relating to the manner in which photographs are to be obtained and placed on operator's licenses. The photograph may be produced by digital imaging or other electronic means and is not a public record.

**SECTION 2. AMENDMENT.** Subsection 1 of section 39-06-19 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>106</sup> Section 39-06-14 was also amended by section 8 of House Bill No. 1103, chapter 271, and section 1 of Senate Bill No. 2244, chapter 275.

1. Every operator's license issued under this chapter expires and is renewed according to this section. The expiration date of ~~an~~ a noncommercial operator's license for a person whose birth occurred in a year ending in an odd numeral is twelve midnight on the anniversary of the birthday in the ~~second~~third subsequent year ending in an odd numeral, except for an individual who, at the time of renewal, is seventy-eight years of age or older is twelve midnight on the anniversary of the birthday in the second subsequent year ending in an odd numeral. The expiration date of ~~an~~ a noncommercial operator's license for a person whose birth occurred in a year ending in an even numeral is twelve midnight on the anniversary of the birthday in the ~~second~~third subsequent year ending in an even numeral except for an individual who, at the time of renewal, is seventy-eight years of age or older is twelve midnight on the anniversary of the birthday in the second subsequent year ending in an even numeral. The expiration date of a commercial operator's license for a person whose birth occurred in a year ending in an odd numeral is twelve midnight on the anniversary of the birthday in the second subsequent year ending in an odd numeral. The expiration date of a commercial operator's license for a person whose birth occurred in a year ending in an even numeral is twelve midnight on the anniversary of the birthday in the second subsequent year ending in an even numeral. A person who has a valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry into the United States, a pending application for asylum in the United States, a pending or approved application for temporary protected status in the United States, approved deferred action status, or a pending application for adjustment of status to that of an alien lawfully admitted for permanent residence or conditional permanent residence status in the United States will be issued a temporary operator's license or nondriver photo identification card. The temporary operator's license or identification card is valid only during the period of time of the applicant's authorized stay in the United States or, if there is no definite end to the period of authorized stay, a period of one year. The license or card may be renewed only upon presentation of valid documentary evidence that the status has been extended.

Approved April 4, 2011  
Filed April 4, 2011

## CHAPTER 275

### SENATE BILL NO. 2244

(Senators G. Lee, Nodland)  
(Representatives Gruchalla, Owens, Weisz)

AN ACT to amend and reenact subdivisions a and b of subsection 3 of section 39-06-14 and section 39-32-02 of the North Dakota Century Code, relating to operator's licenses and intrastate exemptions for drivers of commercial motor vehicles.

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

<sup>107</sup> **SECTION 1. AMENDMENT.** Subdivisions a and b of subsection 3 of section 39-06-14 of the North Dakota Century Code are amended and reenacted as follows:

- a. A driver with a class D license may operate any single vehicle with a gross vehicle weight rating of twenty-six thousand pounds [11793.40 kilograms] or less or any such vehicle towing a vehicle with a gross vehicle weight rating not in excess of ten thousand pounds [4535.92 kilograms]. A driver with a class D license may operate a farm tractor towing another vehicle having a gross weight in excess of ten thousand pounds [4535.92 kilograms], and may operate a truck towing a trailer, ~~semitrailer, or farm trailer when the gross weight of the trailer, semitrailer, or farm trailer, not including the weight of the towing vehicle, does not exceed sixteen thousand pounds [7257.48 kilograms] in excess of ten thousand pounds [4535.92 kilograms] provided the combined weight does not exceed twenty-six thousand pounds [1193.40 kilograms] gross combination weight rating.~~ A driver with a class D license may operate a house car or a vehicle towing a travel trailer being used solely for personal purposes. A driver with a class D license must be eighteen years of age or older to operate a combination of vehicles with a gross combination weight or a gross combination weight rating in excess of twenty-six thousand pounds [11793.40 kilograms], unless the driver is driving a farm vehicle and meets the requirements of subdivision b of subsection 3 of section 39-06-14 and subsection 3 of section 39-06.2-06.
- b. A driver with a class D license may operate any two-axle or tandem-axle motor vehicle, a triple-axle motor vehicle, a farm tractor towing another vehicle having a gross weight in excess of six thousand pounds [2721.55 kilograms], and a truck or truck tractor towing a trailer, semitrailer, or farm trailer if the driver is exempted from a commercial driver's license under subsection 3 of section 39-06.2-06, except the driver may not operate a double trailer, triple trailer, or, if under eighteen years of age, a truck tractor as defined in section 39-01-01 or a bus designed to carry sixteen or more passengers, including the driver.

**SECTION 2. AMENDMENT.** Section 39-32-02 of the North Dakota Century Code is amended and reenacted as follows:

<sup>107</sup> Section 39-06-14 was also amended by section 8 of House Bill No. 1103, chapter 271, and section 1 of House Bill No. 1109, chapter 274.

**39-32-02. Intrastate exemptions from federal hours of service provisionsregulations.**

1. The following intrastate drivers are not subject to hours of service limitationsregulations:
  - a. A driver of an authorized emergency vehicle;
  - b. A driver who operates a motor vehicle ~~that has a manufacturer's~~ intrastate commerce if the gross vehicle weight, gross vehicle weight rating, gross combination weight, and gross combination weight rating equal to or are less than twenty-six thousand one pounds [41793.4011797.18 kilograms] and that is not transporting unless the vehicle is used to transport hazardous materials- requiring a placard or unless the vehicle is designed or used to transport sixteen or more people, including the driver; or
  - c. A driver of a tow truck operating at the request of a law enforcement officer.
2. Except for a driver included in subsection 1, a motor carrier may not permit or require any intrastate driver to drive and an intrastate driver may not drive:
  - a. More than twelve cumulative hours following ~~eighteen~~ consecutive hours off duty;
  - b. For any period after ~~having been the end of the sixteenth hour after coming on duty more than fifteen hours following ten consecutive hours off duty; or~~
  - c. After having been on duty for seventy hours in any period of seven consecutive days.
3. Hours of service limitations do not apply to an intrastate driver ~~when transporting property or passengers operating a commercial vehicle to provide emergency relief during a declared an emergency declared by the governor. The employer must declare and document that the emergency is necessary to assure the protection of public health and safety or to provide other essential assistance to the public. An employer shall maintain documentation for one year and shall make it available upon request of a law enforcement officer. Under this subsection, an emergency is the result of any natural activities, including a tornado, windstorm, thunderstorm, snowstorm, ice storm, blizzard, drought, mudslide, flood, high water, earthquake, forest fire, explosion, blackout, or other occurrence, natural or manmade, which interrupts delivery of essential services, such as electricity, medical care, sewer, water, telecommunications transmissions, or essential supplies, such as food and fuels, or otherwise threatens human life or public welfare.~~
4. An intrastate driver is exempt from maintaining a record of duty status if:
  - a. The driver operates within a one hundred fifty air-mile radius from the driver's normal work-reporting location or from the official worksite of the vehicle;
  - b. At least ~~eighteen~~ consecutive hours off duty separate each twelve hours on duty;

- c. The driver, except for a driver salesperson, returns to the work-reporting location and is released from work within twelve consecutive hours; and
- d. The motor carrier maintains and retains for a period of six months accurate time records showing the time the driver reports for duty and is released from duty each day.

Approved April 20, 2011  
Filed April 20, 2011

## CHAPTER 276

### SENATE BILL NO. 2346

(Senators Olafson, Taylor, Dotzenrod)  
(Representatives Boe, Monson)

AN ACT to amend and reenact subsection 3 of section 39-06-17 of the North Dakota Century Code, relating to restricted licenses for minors.

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

<sup>108</sup> **SECTION 1. AMENDMENT.** Subsection 3 of section 39-06-17 of the North Dakota Century Code is amended and reenacted as follows:

3. A restricted operator's license or permit to operate the parent's or guardian's, grandparent's, sibling's, aunt's, or uncle's automobile, or an automobile which is equipped with dual controls and while accompanied by a qualified instructor, may be issued to any child, who is at least fourteen years of age, and otherwise qualified, upon the written recommendation of the parent or guardian. A child may operate an automobile that is not the parent's or guardian's to take the road test. No operator's license may be issued until the child, accompanied by the parent or guardian, appears in person and satisfies the director that:
  - a. The child is at least fourteen years of age.
  - b. The child is qualified to operate an automobile safely.
  - c. It is necessary for the child to drive the parent's or guardian's, grandparent's, sibling's, aunt's, or uncle's automobile without being accompanied by an adult.
  - d. The child has:
    - (1) Completed a course of classroom instruction and a course of behind-the-wheel instruction acceptable to the director; or
    - (2) Successfully completed a course at an approved commercial driver training school.

The parent or guardian, grandparent, sibling, aunt, or uncle at all times is responsible for any and all damages growing out of the negligent operation of a motor vehicle by any such child. The provisions of this subsection do not authorize the child to drive a commercial truck, motorbus, or taxicab except the holder of a class D license, fourteen or fifteen years of age, may drive a farm motor vehicle having a gross weight of fifty thousand pounds [22679.62 kilograms] when used to transport agricultural products, farm machinery, or farm supplies to or from a farm when so operated within one hundred fifty miles [241.40 kilometers] of the driver's farm.

Approved April 26, 2011  
Filed April 26, 2011

<sup>108</sup> Section 39-06-17 was also amended by section 4 of House Bill No. 1256, chapter 272.

## CHAPTER 277

### HOUSE BILL NO. 1197

(Representatives L. Meier, R. Kelsch, Rohr, Steiner)  
(Senators Dever, Sitte)

AN ACT to create and enact a new section to chapter 39-06 of the North Dakota Century Code, relating to a veteran indicator on an operator's license.

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

**SECTION 1.** A new section to chapter 39-06 of the North Dakota Century Code is created and enacted as follows:

#### **Veteran indicator on license.**

Upon request and with adequate documentation, the director shall place an indicator on the face of an operator's license of a veteran. The veteran may make the request through the department of veterans' affairs.

Approved April 11, 2011  
Filed April 11, 2011

## CHAPTER 278

### SENATE BILL NO. 2112

(Transportation Committee)

(At the request of the Department of Transportation)

AN ACT to create and enact three new subsections to section 39-06.2-02 and section 39-06.2-08.1 of the North Dakota Century Code, relating to commercial driver's licenses; and to amend and reenact subsection 25 of section 39-06.2-02, subdivision b of subsection 4 of section 39-06.2-07, and subsections 1 and 5 of section 39-06.2-08 of the North Dakota Century Code, relating to commercial driver's licenses.

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

**SECTION 1.** Three new subsections to section 39-06.2-02 of the North Dakota Century Code are created and enacted as follows:

"Downgrade" means:

- a. A state allows the driver to change the driver's self-certification to interstate, but operating exclusively in transportation or operation excepted from 49 CFR part 391, as provided in 390.3(f), 391.2, 391.68, or 398.3;
- b. A state allows the driver to change the driver's self-certification to intrastate only, if the driver qualifies under the state's physical qualification requirements for intrastate only;
- c. A state allows the driver to change the driver's certification to intrastate, but operating exclusively in transportation or operations excepted from all or part of the state driver's qualification; or
- d. A state removes the commercial driver's license privilege from the driver's license.

"Electronic device" includes a cellular telephone, personal digital assistant, pager, computer, or any other device used to input, write, send, receive, or read text.

"Texting" means manually entering alphanumeric text into, or reading text from, an electronic device. This action includes short message service, e-mailing, instant messaging, a command or request to access a worldwide web page, or engaging in any other form of electronic text retrieval or entry, for present or future communication. "Texting" does not include:

- a. Reading, selecting, or entering a telephone number, an extension number, or voice mail retrieval codes and commands into an electronic device for the purpose of initiating or receiving a telephone call using voice commands to initiate or receive a telephone call;
- b. Inputting, selecting, or reading information on a global positioning system or navigation system; or



- c. Using a device capable of performing multiple functions, including fleet management systems, dispatching devices, smartphones, citizens' band radios, or music players, for a purpose that is not otherwise prohibited in 49 CFR part 383.

**SECTION 2. AMENDMENT.** Subsection 25 of section 39-06.2-02 of the North Dakota Century Code is amended and reenacted as follows:

25. "Serious traffic violation" means a conviction when operating a commercial motor vehicle of:
- a. Excessive speeding, involving a single charge of any speed fifteen miles [24.14 kilometers] per hour or more, above the posted speed limit;
  - b. Reckless driving, as defined under section 39-08-03 or local ordinance, including charges of driving a commercial motor vehicle in willful or wanton disregard for the safety of persons or property, improper or erratic traffic lane changes, or following the vehicle ahead too closely;
  - c. A violation of any state or local law related to motor vehicle traffic control, other than a parking violation, arising in connection with a fatal accident;
  - d. Driving a commercial motor vehicle without obtaining a commercial driver's license;
  - e. Driving a commercial motor vehicle without a commercial driver's license in the driver's possession. An individual who provides proof to the enforcement authority that issued the citation, by the date the individual must appear in court or pay a fine for such violation, that the individual held a valid commercial driver's license on the date the citation was issued, is not guilty of this offense; or
  - f. Driving a commercial motor vehicle without the proper class of commercial driver's license or endorsement, or both, for the specific vehicle group being operated or for the passengers or type of cargo being transported; or
  - g. Violating a state or local law or ordinance prohibiting texting while driving.

**SECTION 3.** Section 39-06.2-08.1 of the North Dakota Century Code is created and enacted as follows:

**39-06.2-08.1. Commercial driver's license medical certification requirements.**

1. The director may issue a commercial driver's instruction permit or commercial driver's license to a North Dakota resident who meets the medical qualification and certification requirements pursuant to the limitations of 49 CFR parts 383 and 391.
2. Every individual who makes application for a commercial driver's instruction permit or commercial driver's license must certify that the individual meets the qualification requirements contained in 49 CFR part 391 or certify that the individual's commercial transportation is entirely in intrastate commerce and is not subject to 49 CFR part 391.

3. The application will contain the following categories to comply with the commercial driver certification requirements:
  - a. Interstate and subject to 49 CFR part 391.
  - b. Interstate, but operating exclusively in transportation or operations excepted under 49 CFR part 390.3(f), 391.2, 391.68, or 398.3.
  - c. Intrastate and subject to state driver's qualification requirements.
  - d. Intrastate, but operating exclusively in transportation or operations excepted from all or part of the state driver's qualification requirements.
4. Every individual who makes application for or holds a commercial driver's instruction permit or commercial driver's license must submit a copy of the individual's medical certificate to the director unless the commercial transportation is not subject to 49 CFR part 391.
5. The director will downgrade or remove the commercial driving privilege from the license if the medical certificate expires and the driver does not change the driver's certification if the driver is no longer subject to 49 CFR part 391.
6. If the driver provides a current medical certification, the director shall upgrade without retesting the license of a driver which was downgraded under this section.

**SECTION 4. AMENDMENT.** Subdivision b of subsection 4 of section 39-06.2-07 of the North Dakota Century Code is amended and reenacted as follows:

- b. The commercial driver's instruction permit may not be issued for a period to exceed six months. Only one renewal or reissuance may be granted within a two-year 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. The letter of authority is used after an allowable number of permits have been issued. The holder of a commercial driver's instruction permit may, unless otherwise disqualified, 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.

**SECTION 5. AMENDMENT.** Subsections 1 and 5 of section 39-06.2-08 of the North Dakota Century Code are amended and reenacted as follows:

1. The application for a commercial driver's license or commercial driver's instruction permit must include the following:
  - a. The full name and current mailing address of the applicant;
  - b. A physical description of the applicant, including sex, height, weight, and eye and hair color;
  - c. Date of birth;

- d. The applicant's social security number, unless the application is for a nonresident commercial driver's license and the applicant is a resident of a foreign jurisdiction;
  - e. The applicant's signature;
  - f. The certifications including those required by 49 CFR part ~~383.71(a)~~383.71;
  - g. Any other information required by the director; and
  - h. A consent to release driving record information.
5. Any individual who knowingly falsifies information or certifications required under subsection 1 is subject to suspension, revocation, ~~or cancellation~~, or disqualification of the individual's commercial driver's license or pending application for a period of at least sixty consecutive days.

Approved April 20, 2011  
Filed April 20, 2011

## CHAPTER 279

### HOUSE BILL NO. 1195

(Representatives Klemin, Drovdal, Vigesaa)  
(Senators Hogue, Lyson, Nething)

AN ACT to create and enact a new section to chapter 39-08 of the North Dakota Century Code, relating to the use of a wireless communications device; to amend and reenact subsection 2 of section 39-06.1-06 and section 39-06.1-09 of the North Dakota Century Code, relating to fees for a moving violation; and to provide a penalty.

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

<sup>109</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, 39-10-42, 39-10-46, or 39-10-46.1, a fee of fifty dollars.
  - b. A violation of section 39-10-05 involving failure to yield to a pedestrian or subsection 1 of section 39-10-28, a fee of fifty dollars.
  - c. A violation of section 39-21-41.2, a fee of twenty-five dollars.
  - d. A violation of subsection 1 of section 39-12-02 or section 3 of this Act, 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.

<sup>110</sup> **SECTION 2. AMENDMENT.** Section 39-06.1-09 of the North Dakota Century Code is amended and reenacted as follows:

#### **39-06.1-09. Moving violation defined.**

For the purposes of sections 39-06.1-06 and 39-06.1-13, a "moving violation" means a violation of section 39-04-22, subsection 1 of section 39-04-37, section 39-04-55, 39-06-01, 39-06-14, 39-06-16, section 3 of this Act, 39-09-04.1, or 39-09-09, subsection 1 of section 39-12-02, sections 39-12-04, 39-12-05, 39-12-06, 39-12-09, 39-24-02, or 39-24-09, except subdivisions b and c of subsection 5, or equivalent ordinances; or a violation of the provisions of chapter 39-10, 39-10.2, or

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<sup>109</sup> Section 39-06.1-06 was also amended by section 3 of House Bill No. 1188, chapter 192, section 1 of Senate Bill No. 2157, chapter 280, and section 3 of Senate Bill No. 2207, chapter 268.

<sup>110</sup> Section 39-06.1-09 was also amended by section 5 of House Bill No. 1256, chapter 272.

39-21, or equivalent ordinances, except subsection 5 of section 39-10-26, sections 39-21-44 and 39-21-45.1, subsections 2 and 3 of section 39-21-46, and those sections within those chapters which are specifically listed in subsection 1 of section 39-06.1-08.

**SECTION 3.** A new section to chapter 39-08 of the North Dakota Century Code is created and enacted as follows:

**Use of a wireless communications device prohibited.**

1. The operator of a motor vehicle that is part of traffic may not use a wireless communications device to compose, read, or send an electronic message.
2. Under this section:
  - a. "Electronic message" means a self-contained piece of digital communication that is designed or intended to be transmitted between physical devices. The term includes e-mail, a text message, an instant message, a command or request to access a world wide web page, or other data that uses a commonly recognized electronic communications protocol. The term does not include:
    - (1) Reading, selecting, or entering a telephone number, an extension number, or voice mail retrieval codes and commands into an electronic device for the purpose of initiating or receiving a telephone or cellular phone call or using voice commands to initiate or receive a telephone or cellular phone call;
    - (2) Inputting, selecting, or reading information on a global positioning system device or other navigation system device;
    - (3) Using a device capable of performing multiple functions, such as fleet management systems, dispatching devices, smart phones, citizen band radios, music players, or similar devices, for a purpose that is not otherwise prohibited;
    - (4) Voice or other data transmitted as a result of making a telephone or cellular phone call; or
    - (5) Data transmitted automatically by a wireless communication device without direct initiation by an individual.
  - b. "Traffic" means operation of a motor vehicle while in motion or for the purposes of travel on any street or highway and includes a temporary stop or halt of motion, such as at an official traffic-control signal or sign. The term does not include a motor vehicle that is lawfully parked.
3. This section does not apply if a wireless communications device is used for obtaining emergency assistance to report a traffic accident, medical emergency, or serious traffic hazard or to prevent a crime about to be committed, in the reasonable belief that an individual's life or safety is in immediate danger, or in an authorized emergency vehicle while in the performance of official duties.

## CHAPTER 280

### SENATE BILL NO. 2157

(Senators Heckaman, Andrist, Nodland)  
(Representatives Devlin, Guggisberg, Klein)

AN ACT to create and enact a new subdivision to subsection 2 of section 39-06.1-06 of the North Dakota Century Code, relating to the fee for entering a road closed due to hazardous conditions; to amend and reenact section 39-10-21.1 of the North Dakota Century Code, relating to entering a closed road; and to provide a penalty.

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

<sup>111</sup> **SECTION 1.** 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 subsection 2 of section 39-10-21.1, a fee of two hundred fifty dollars.

**SECTION 2. AMENDMENT.** Section 39-10-21.1 of the North Dakota Century Code is amended and reenacted as follows:

#### **39-10-21.1. Closing road because of hazardous conditions - Posting of official traffic-control devices - Entering closed road prohibited.**

1. The highway patrol or local law enforcement authorities having jurisdiction over a road may close a road temporarily due to hazardous conditions for the protection and safety of the public. If such a closing is made, the authority ordering the closing shall make every reasonable attempt to notify the public and, when practical, may post appropriate official traffic-control devices to advise motorists of the closing. ~~No person~~
2. An individual, while operating a motor vehicle, may not knowingly enter a road closed ~~under this section~~ which is posted with an appropriate traffic-control device at the point of entry.

Approved May 17, 2011  
Filed May 17, 2011

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<sup>111</sup> Section 39-06.1-06 was also amended by section 3 of House Bill No. 1188, chapter 192, section 1 of House Bill No. 1195, chapter 279, and section 3 of Senate Bill No. 2207, chapter 268.

## CHAPTER 281

### HOUSE BILL NO. 1262

(Representatives Mock, DeKrey, Kretschmar, S. Kelsh)  
(Senators Lyson, Nelson)

AN ACT to amend and reenact sections 12.1-08-11, 39-10-71, and 39-24.1-13 of the North Dakota Century Code, relating to fleeing a law enforcement officer.

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

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

##### **12.1-08-11. Refusing to halt.**

Any person, other than the driver of a motor vehicle under section 39-10-71, who willfully fails or refuses to stop or who otherwise flees or attempts to elude, in any manner, a pursuing peace officer, when given a visual or audible signal to stop, is guilty of a class B misdemeanor for a first or second offense and a class A misdemeanor for a subsequent offense. A signal to stop complies with this section if the signal is perceptible to the person and:

1. If given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the vehicle is appropriately marked showing it to be an official law enforcement vehicle; or
2. If not given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the officer is in uniform ~~and~~ prominently displays the officer's badge of office.

**SECTION 2. AMENDMENT.** Section 39-10-71 of the North Dakota Century Code is amended and reenacted as follows:

##### **39-10-71. Fleeing or attempting to elude a peace officer - Penalty.**

1. Any driver of a motor vehicle who willfully fails or refuses to bring the vehicle to a stop, or who otherwise flees or attempts to elude, in any manner, a pursuing police vehicle or peace officer, when given a visual or audible signal to bring the vehicle to a stop, is guilty of a class A misdemeanor for a first offense and a class C felony for a subsequent offense within three years. An individual who violates this section while fleeing after or in the commission of a felony is guilty of a class C felony.
2. A signal complies with this section if the signal is perceptible to the driver and:
  - 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 ~~and~~ prominently displays the officer's badge of office.

**SECTION 3. AMENDMENT.** Section 39-24.1-13 of the North Dakota Century Code is amended and reenacted as follows:

**39-24.1-13. Fleeing or attempting to elude a peace officer.**

1. Any driver of a snowmobile who willfully fails or refuses to bring the snowmobile 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 snowmobile to a stop, is guilty of a class B misdemeanor for a first or second offense and a class A misdemeanor for a subsequent offense. 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 ~~and~~ prominently displays the officer's badge of office.
2. Any sentence imposed under this section must include a minimum fine of at least five hundred dollars.

Approved March 14, 2011  
Filed March 14, 2011



## CHAPTER 282

### SENATE BILL NO. 2044

(Legislative Management)  
(Public Safety and Transportation Committee)

AN ACT to amend and reenact subsection 3 of section 39-12-02 and section 39-12-08 of the North Dakota Century Code, relating to fees for issuing overweight permits and fees for overweight permit violations for counties; to provide for a legislative management study; and to declare an emergency.

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

<sup>112</sup> **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 each permit and all funds collected hereunder by the highway patrol must be deposited in the state highway fund for use in the construction and maintenance of highways and operating expenses of the department of transportation. ~~Except for publicly, 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 a non-self-issuing interstate permit is ten dollars per trip or three hundred dollars per calendar year for unlimited trips.
  - c. The fee for special mobile equipment is twenty-five dollars per trip.
  - d. The fee for engineering is twenty-five dollars per trip.
  - e. The fee for faxing a permit is five dollars.
  - f. The fee for a single trip permit is twenty dollars per trip.
  - g. The fee for a bridge length permit is thirty dollars per trip or one hundred fifty dollars per calendar year.
  - h. The fee for a longer combination vehicle permit is one hundred dollars per month for fees paid on a monthly basis.

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<sup>112</sup> Section 39-12-02 was also amended by section 1 of House Bill No. 1254, chapter 283, section 1 of Senate Bill No. 2308, chapter 284, and section 2 of Senate Bill No. 2308, chapter 284.

- 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 dollars per calendar year unless the vehicle is a noncommercial fish house trailer being moved by the owner, then the fee is twenty dollars per calendar year.

**SECTION 2. AMENDMENT.** Section 39-12-08 of the North Dakota Century Code is amended and reenacted as follows:

**39-12-08. Penalty for violation of chapter.**

A person operating a motor vehicle or the owner of the motor vehicle being operated without a permit as specified in this chapter must be assessed a fee of one hundred dollars. Any person violating any other provision of this chapter, for which a specific penalty is not provided, must be assessed a fee of twenty dollars. Violating the conditions of any permit type automatically voids the permit. For a permit allowed under this chapter, if the violation is of a permit issued by a county under a home rule ordinance or any city, including a home rule city, the statutory fee is for a violation of state law in an amount provided by this section.

**SECTION 3. LEGISLATIVE MANAGEMENT STUDY - MOTOR VEHICLE PERMIT FEES.** During the 2011-12 interim, the legislative management shall consider studying motor vehicle permit fees, including overweight and overwidth permit fees charged by cities and counties. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

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

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 283

### HOUSE BILL NO. 1254

(Representative Weisz)  
(Senators Klein, G. Lee, Luick)

AN ACT to create and enact a new subsection to section 39-12-02 of the North Dakota Century Code, relating to permits for vehicles of excessive size or weight.

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

<sup>113</sup> **SECTION 1.** A new subsection to section 39-12-02 of the North Dakota Century Code is created and enacted as follows:

Permits issued for overdimensional movements of vehicles that do not exceed ten feet [3.05 meters] in total width, including load, are valid for travel during the day and night.

Approved April 25, 2011  
Filed April 25, 2011

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<sup>113</sup> Section 39-12-02 was also amended by section 1 of Senate Bill No. 2308, chapter 284, section 2 of Senate Bill No. 2308, chapter 284, and section 1 of Senate Bill No. 2044, chapter 282.

## CHAPTER 284

### SENATE BILL NO. 2308

(Senators Stenehjem, G. Lee)  
(Representatives Carlson, Ruby)

AN ACT to create and enact a new subdivision to subsection 3 of section 39-12-02, a new subsection to section 39-12-02, and a new section to chapter 39-12 of the North Dakota Century Code, relating to special permits for oversize and overweight vehicles, a motor carrier electronic permit transaction fund, and a line of credit; to provide for a continuing appropriation; and to declare an emergency.

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

114 **SECTION 1.** A new subdivision to subsection 3 of section 39-12-02 of the North Dakota Century Code is created and enacted as follows:

The 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 fifteen dollar fee for every permit issued under this section to be deposited into the motor carrier electronic permit transaction fund.

115 **SECTION 2.** A new subsection to section 39-12-02 of the North Dakota Century Code is created and enacted as follows:

There is created in the state treasury a fund known as the motor carrier electronic permit transaction fund. All money in the fund is appropriated on a continuing basis to the highway patrol to defray the costs of establishing and maintaining an online electronic permit system for permitting and routing oversize and overweight vehicles in this state. The highway patrol may contract with a private entity to establish, operate, and maintain an online electronic permit system. The online electronic permit system includes the issuance of permits under this section and an automated routing system. The automated routing system must include integration of department of transportation traveler information system information, all other data required for the automated routing system, and integration of the highway patrol computer-aided dispatch system.

**SECTION 3.** A new section to chapter 39-12 of the North Dakota Century Code is created and enacted as follows:

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<sup>114</sup> Section 39-12-02 was also amended by section 1 of House Bill No. 1254, chapter 283, section 2 of Senate Bill No. 2308, chapter 284, and section 1 of Senate Bill No. 2044, chapter 282.

<sup>115</sup> Section 39-12-02 was also amended by section 1 of House Bill No. 1254, chapter 283, section 1 of Senate Bill No. 2308, chapter 284, and section 1 of Senate Bill No. 2044, chapter 282.

**Bank of North Dakota - Line of credit.**

The Bank of North Dakota shall extend a line of credit not to exceed two million five hundred sixty thousand dollars to the highway patrol until June 30, 2015, to establish an online electronic permit system. The highway patrol may access this line of credit and shall repay the line of credit with funds in the motor carrier electronic permit transaction fund.

**SECTION 4. PROJECT PLANNING AND IMPLEMENTATION.** The highway patrol shall involve the information technology department in the study and planning of the motor carrier electronic permit project, for the biennium beginning July 1, 2011, and ending June 30, 2013. The highway patrol shall include representatives of the information technology department on the project team responsible for the study and planning of the project and receive approval from the information technology department prior to proceeding with any study recommendations relating to the project.

**SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 27, 2011  
Filed April 27, 2011

## CHAPTER 285

### HOUSE BILL NO. 1079

(Transportation Committee)

(At the request of the Department of Transportation)

AN ACT to amend and reenact subsection 1 of section 39-12-05 of the North Dakota Century Code, relating to steering axle weight limits on the national system of interstate and defense highways.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 39-12-05 of the North Dakota Century Code is amended and reenacted as follows:

1. With a single axle that carries a gross weight in excess of twenty thousand pounds [9071.85 kilograms] or a wheel load over ten thousand pounds [4535.92 kilograms]. A wheel may not carry a gross weight over five hundred fifty pounds [249.48 kilograms] for each inch [2.54 centimeters] of tire width except that such limits may not be applied to tires on the steering axle. Steering axle weights are limited to twenty thousand pounds [9071.85 kilograms] or the axle rating established by the manufacturer, whichever is lower. Axles spaced forty inches [101.60 centimeters] apart or less are considered as one axle and, on axles spaced over forty inches [101.60 centimeters] and under eight feet [2.44 meters] apart, the axle load may not exceed seventeen thousand pounds [7711.07 kilograms] per axle. The wheel load, in any instance, may not exceed one-half the allowable axle load. Spacing between axles is measured from axle center to axle center.

Approved March 28, 2011

Filed March 28, 2011

## CHAPTER 286

### SENATE BILL NO. 2102

(Transportation Committee)  
(At the request of the State Treasurer)

AN ACT to amend and reenact section 39-12-14.1 of the North Dakota Century Code, relating to extraordinary road use fees.

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

**SECTION 1. AMENDMENT.** Section 39-12-14.1 of the North Dakota Century Code is amended and reenacted as follows:

#### **39-12-14.1. Voluntary settlement of extraordinary road use fee charges.**

Before the complaint is issued pursuant to section 39-12-14, the owner, or the owner's driver or agent, may voluntarily pay the amount of the extraordinary road use fee, or may provide proof of surety coverage to ensure payment of the extraordinary road use fee, provided under section 39-12-17, plus any towing or storage costs. Any settlement, whether made by the owner, or the owner's driver or agent, must be presumed to be of a voluntary nature. A peace officer or a peace officer's designee is authorized to receive the settlement payment on behalf of the authority having jurisdiction of the road whereon the violation occurred. The extraordinary road use fees must be ~~remitted to~~ deposited with the state treasurer to be credited to the highway fund.

Approved April 25, 2011

Filed April 25, 2011

## CHAPTER 287

### HOUSE BILL NO. 1082

(Transportation Committee)

(At the request of the Department of Transportation)

AN ACT to create and enact section 39-12-24 of the North Dakota Century Code, relating to cooperative regional permit agreements on excess size or weight vehicles.

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

**SECTION 1.** Section 39-12-24 of the North Dakota Century Code is created and enacted as follows:

**39-12-24. Authority for cooperative regional permit agreements on excess size or weight vehicles.**

1. The superintendent and the director, or the director's designee, may enter cooperative regional permit agreements with any state that has enacted a law authorizing the agreement for the regional operation or movement of nondivisible oversize or overweight vehicles and to facilitate the uniform application, administration, and enforcement of laws concerning nondivisible oversize or overweight vehicles.
2. The agreement may include the establishment of a regional permit system for the operation or movement of nondivisible oversize or overweight vehicles from one state in the region to or through other states in the region under a single-trip permit in accordance with the requirements of any state that is a party to the agreement.
3. The North Dakota highway patrol and the department may enter the agreement with any state that has enacted a law authorizing the agreement to:
  - a. Authorize any state to issue regional permits for nondivisible oversize or overweight vehicles to operate on North Dakota state highways. A regional permit issued by any state must conform to North Dakota permit requirements in chapter 39-12, the rules and regulations implementing chapter 39-12, and as required in the agreement;
  - b. Issue regional permits for nondivisible oversize or overweight vehicles to operate on highways of any state that has enacted laws authorizing the agreement in accordance with the laws of the state and as required in the agreement; and
  - c. Agree to the administration of the agreement by any state that is party to the agreement.
4. The North Dakota highway patrol may enforce the terms of any regional permit concerning the operation of the permitted vehicle on North Dakota state highways according to North Dakota law.



5. The agreement must provide that employees and officials of any state that is party to the agreement who administer or enforce the agreement, or who otherwise act under the terms of the agreement, may not be eligible for compensation, employee rights, or benefits from North Dakota and may not be considered employees or officials of North Dakota.
6. The agreement may provide for uniform procedures and standards for nondivisible oversize and overweight vehicles and regional permits, including enforcement procedures, safety inspection standards, operational standards, permit and application form procedures, and driver qualifications.
7. The North Dakota highway patrol shall deposit all fees it may collect for regional permits on behalf of any state included in the agreement into a fund established as the regional permit fund. All moneys collected by the North Dakota highway patrol as fees for the issue of a regional permit and deposited into the regional permit fund are appropriated on a continuing basis for the purpose of paying each state included in the agreement for each state's respective share of the total fees collected for the regional permit. The North Dakota highway patrol shall deposit all moneys collected on behalf of North Dakota for regional permits issued under this section into the state highway fund in accordance with section 39-12-02.
8. Notwithstanding any provision of this section to the contrary, all North Dakota statutes and rules and regulations prescribing size or weight vehicle requirements, or relating to permits for oversize or overweight vehicles, remain in full force and effect until amended or repealed by law, and the agreement entered under this section must comply with North Dakota statutes and rules and regulations.

Approved March 28, 2011  
Filed March 28, 2011

## CHAPTER 288

### SENATE BILL NO. 2113

(Judiciary Committee)  
(At the request of the Attorney General)

AN ACT to amend and reenact sections 20.1-13.1-01 and 20.1-13.1-03, subsections 2 and 3 of section 20.1-13.1-05, subsections 2 and 4 of section 20.1-13.1-08, sections 20.1-13.1-10, 20.1-15-01, and 20.1-15-03, subsections 2 and 3 of section 20.1-15-05, subsections 2 and 4 of section 20.1-15-08, sections 20.1-15-11 and 20.1-15-15, subsection 4 of section 39-06.2-10.6, sections 39-20-01 and 39-20-02, subsections 2, 3, and 4 of section 39-20-03.1, subsections 2 and 3 of section 39-20-03.2, subsections 2 and 4 of section 39-20-05, and sections 39-20-07, 39-20-14, 39-24.1-01, 39-24.1-03, and 39-24.1-08 of the North Dakota Century Code, relating to chemical tests and the state crime laboratory.

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

**SECTION 1. AMENDMENT.** Section 20.1-13.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-13.1-01. Implied consent to determine ~~alcoholic~~ alcohol concentration and ~~drug content~~ presence of blood ~~drugs~~.**

Any ~~person~~ individual who operates a motorboat or vessel in this state is deemed to have given consent, and shall consent, subject to this chapter, to a chemical test, or tests, of the blood, breath, ~~saliva~~, or urine for the purpose of determining the ~~alcoholic, other drug~~ alcohol concentration or presence of other drugs, or combination thereof, ~~content of~~ in the individual's blood, breath, or urine. As used in this chapter, "operates" means to be in motion, en route, but not at anchor or aground; "vessel" means any watercraft used or designed to be used for navigation on the water such as a boat operated by machinery, either permanently or temporarily affixed, a sailboat other than a sailboard, an inflatable manually propelled boat, a canoe, kayak, or rowboat, but does not include an inner tube, air mattress, or other water toy; "drug" means any drug or substance or combination of drugs or substances which renders a ~~person~~ individual incapable of safely operating a motorboat or vessel; and "chemical test" means any test or tests to determine the ~~alcoholic, or other drug~~ alcohol concentration or presence of other drugs, or combination thereof, ~~content of~~ in the individual's blood, breath, ~~saliva~~, or urine, approved by the director of the state crime laboratory or the director's designee under this chapter. The chemical test must be administered at the direction of a game warden or a law enforcement officer only after placing the ~~person~~ individual, except ~~persons~~ individuals mentioned in section 20.1-13.1-04, under arrest and informing that ~~person~~ individual that the ~~person~~ individual is or will be charged with the offense of operating a motorboat or vessel while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a minor under section 27-20-13 satisfies the requirement of an arrest. The game warden or law enforcement officer shall also inform the ~~person~~ individual charged that refusal of the ~~person~~ individual to submit to the chemical test determined appropriate will result in that ~~person~~ individual being prohibited from operating a motorboat or vessel for up to

three years. The game warden or law enforcement officer shall determine the chemical test to be used. When a minor is taken into custody for violating section 20.1-13-07, the game warden or law enforcement officer shall diligently attempt to contact the minor's parent or legal guardian to explain the cause for the custody and the implied consent chemical testing requirements. Neither the game warden or 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.

**SECTION 2. AMENDMENT.** Section 20.1-13.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-13.1-03. ~~Persons~~Individuals qualified to administer chemical test and opportunity for additional test.**

Only an individual medically qualified to draw blood, acting at the request of a game warden or a law enforcement officer, may withdraw blood for the purpose of determining the ~~alcoholic, drug~~alcohol concentration or presence of other drugs, or combination thereof, ~~content of in~~ the individual's blood. The director of the state crime laboratory or the director's designee shall determine the qualifications or credentials for being medically qualified to draw blood and shall issue a list of approved designations, including medical doctor and registered nurse. This limitation does not apply to the taking of a breath, ~~saliva~~, or urine specimen. The director of the state crime laboratory, or the director's designee, shall electronically post a copy of the certified list of approved designations, including medical doctor and registered nurse, with the state crime laboratory division of the attorney general at the attorney general website and shall make the certified records required by this section available for download in a printable format on the attorney general website. The ~~person~~individual tested may have an individual of that ~~person's~~individual's own choosing, who is medically qualified to draw blood, administer a chemical test in addition to any administered at the direction of a game warden or a law enforcement officer with all costs of the additional chemical test to be the responsibility of the ~~person~~individual charged. The failure or inability to obtain an additional chemical test by a ~~person~~individual does not preclude the admission of the chemical test taken at the direction of a game warden or a law enforcement officer. Upon the request of the ~~person~~individual who is tested, a copy of the operational checklist and test record of a breath sample test or analytical report of a blood, or urine, ~~or saliva~~ sample test taken at the direction of the game warden or law enforcement officer must be made available to that ~~person~~individual by the department or law enforcement agency that administered the chemical test.

**SECTION 3. AMENDMENT.** Subsections 2 and 3 of section 20.1-13.1-05 of the North Dakota Century Code are amended and reenacted as follows:

2. If a chemical test administered under section 20.1-13.1-01 or 20.1-13.1-04 was by ~~saliva or urine~~ sample or by drawing blood as provided in section 20.1-13.1-03 and the ~~person~~individual tested does not reside in an area in which the game warden or law enforcement officer has jurisdiction, the game warden or law enforcement officer shall, on receiving the analysis of the ~~saliva, urine,~~ or blood from the director of the state crime laboratory or the director's designee and if the analysis shows that ~~person~~individual had an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that ~~person's~~individual's reappearance within the game warden's or officer's jurisdiction or notify a game warden or law enforcement agency having jurisdiction where the ~~person~~individual resides. On that

notification, that game warden or law enforcement agency shall immediately issue a statement of intent to prohibit the ~~person~~individual from operating a motorboat or vessel. The issuance of a statement of intent to prohibit the ~~person~~individual from operating a motorboat or vessel serves as the director's official notification to the ~~person~~individual of the director's intent to prohibit the ~~person~~individual from operating a motorboat or vessel in this state.

3. The game warden or law enforcement officer, within five days of issuing the statement of intent, shall forward to the director a certified written report in the form required by the director. If the statement was given because of the results of a chemical test, the report must show that the game warden or officer had probable cause to believe the ~~person~~individual had been operating a motorboat or vessel while in violation of section 20.1-13-07, that the ~~person~~individual was lawfully arrested, that the ~~person~~individual was chemically tested under this chapter, and that the results of the test show that the ~~person~~individual had an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight. In addition to the report, the game warden or law enforcement officer shall forward to the director a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood, ~~saliva,~~ or urine test for all tests administered at the direction of the game warden or officer.

**SECTION 4. AMENDMENT.** Subsections 2 and 4 of section 20.1-13.1-08 of the North Dakota Century Code are amended and reenacted as follows:

2. If the issue to be determined by the hearing concerns the prohibition from operating a motorboat or vessel for operating a motorboat or vessel while having an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight, the hearing must be before a hearing officer assigned by the director and at a time and place designated by the director. The hearing must be recorded and its scope may cover only the issues of whether the arresting warden or officer had probable cause to believe the ~~person~~individual had been operating a motorboat or vessel in violation of section 20.1-13-07; whether the ~~person~~individual was placed under arrest; whether the ~~person~~individual was tested in accordance with section 20.1-13.1-01 or 20.1-13.1-04 and, if applicable, section 20.1-13.1-03; and whether the chemical test results show the ~~person~~individual had an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood, or urine, ~~or saliva~~ sample from the director of the state crime laboratory or the director's designee, or a certified copy of the checklist and test records from a certified breath test operator establish prima facie the alcohol, other drug, or a combination thereof concentration shown therein. Whether the ~~person~~individual was informed that that ~~person~~individual may be prohibited from operating a motorboat or vessel based on the results of the chemical test is not an issue.
4. At a hearing under this section, the regularly kept records of the director and state crime laboratory may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director and state crime laboratory: ~~any~~

- a. ~~Any~~ Any copy of a certified copy of an analytical report of a blood, ~~or urine, or saliva~~ sample received by the director from the director of the state crime laboratory or the director's designee or a game warden or a law enforcement officer, ~~or~~ a certified copy of the checklist and test records received by the director from a certified breath test operator; ~~and any~~
- b. Any copy of a certified copy of a certificate of the director of the state crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol, ~~other drug concentration or the presence of other drugs,~~ or a combination thereof ~~concentration,~~ received by the director from the director of the state crime laboratory or the director's designee, ~~or the recorder, unless the board of county commissioners has designated a different official to maintain the certificate~~ that have been electronically posted with the state crime laboratory division of the attorney general at the attorney general website.

**SECTION 5. AMENDMENT.** Section 20.1-13.1-10 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-13.1-10. Interpretation of chemical tests.**

Upon the trial of any action or proceeding arising out of acts alleged to have been committed by any ~~person~~individual while operating a motorboat or vessel while under the influence of intoxicating liquor, drugs, or a combination thereof, evidence of the amount of alcohol, concentration or presence of other drugs, or a combination thereof, in the ~~person's individual's~~ blood, breath, or urine at the time of the act alleged as shown by a chemical analysis of the blood, breath, ~~saliva,~~ or urine is admissible. For the purpose of this section:

1. ~~A person~~An individual having an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after operating a motorboat or vessel is under the influence of intoxicating liquor, drugs, or a combination thereof at the time of operating a motorboat or vessel.
2. Alcohol concentration is based upon grams of alcohol per one hundred ~~cube centimeters~~milliliters of blood or grams of alcohol per two hundred ten liters of end expiratory breath or grams of alcohol per sixty-seven ~~cube centimeters~~milliliters of urine.
3. The results of the chemical test must be received in evidence when it is shown that the sample was properly obtained and the test was fairly administered, and if the test is shown to have been performed according to methods and with devices approved by the director of the state crime laboratory or the director's designee, and by an individual possessing a certificate of qualification to administer the test issued by the director of the state crime laboratory or the director's designee. The director of the state crime laboratory or the director's designee is authorized to approve satisfactory devices and methods of chemical tests and determine the qualifications of individuals to conduct such tests, and shall issue a certificate to every qualified operator. An operator shall exhibit the certificate upon demand of the ~~person~~individual requested to take the chemical test.
4. The director of the state crime laboratory or the director's designee may appoint, train, certify, and supervise field inspectors of breath testing

equipment and its operation, and the inspectors shall report the findings of any inspection to the director of the state crime laboratory or the director's designee for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the ~~persons~~individuals qualified to administer them, the director of the state crime laboratory or the director's designee shall prepare, certify, and ~~file~~electronically post a written record of the approval with the ~~director and the recorder in each county, unless the board of county commissioners designates a different official~~state crime laboratory division of the attorney general at the attorney general website, and shall include in the record:

- a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
  - b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.
  - c. The operational checklist and forms prescribing the methods currently approved by the director of the state crime laboratory or the director's designee in using the devices during the administration of the tests.
  - d. The material filed~~certified records electronically posted~~ under this section may be supplemented when the director of the state crime laboratory or the director's designee determines it to be necessary, and any certified supplemental material has records have the same force and effect as the ~~material that it supplements~~records that are supplemented.
  - e. The state crime laboratory shall make the certified records required by this section available for download in a printable format on the attorney general website.
5. Copies of the state crime laboratory certified records referred to in subsections 3 and 4, ~~certified by the recorder, or designated official, that have been electronically posted with the state crime laboratory division of the attorney general at the attorney general website~~ must be admitted as prima facie evidence of the matters stated in the records.
  6. A certified copy of the analytical report of a blood, or urine, ~~or saliva~~ test issued by the director of the state crime laboratory or the director's designee must be accepted as prima facie evidence of the results of a chemical test performed under this chapter.
  7. Notwithstanding any statute or rule to the contrary, the defendant in any criminal proceeding may subpoena, without cost to the defendant, the ~~person~~individual who conducted the chemical test referred to in this section to testify at the trial on the issue of the amount of alcohol, concentration or presence of other drugs, or a combination thereof, in the defendant's blood, breath, ~~saliva~~, or urine at the time of the alleged act.
  8. A signed statement from the nurse or medical technician drawing the blood sample for testing as set forth in subsection 3 is prima facie evidence that the blood sample was properly drawn and no further foundation for the admission of such evidence may be required.

**SECTION 6. AMENDMENT.** Section 20.1-15-01 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-15-01. Implied consent to determine alcoholic alcohol concentration and drug content presence of blood drugs.**

Any ~~person~~individual who is afield with a gun or other firearm or a bow and arrow is deemed to have given consent, and shall consent, subject to this chapter, to a chemical test of the blood, breath, ~~saliva~~, or urine for the purpose of determining the ~~alcoholic, other drug~~alcohol concentration or presence of other drugs, or combination thereof, ~~content of in the individual's blood, breath, or urine~~. As used in this chapter, "drug" means any drug or substance or combination of drugs or substances which renders a ~~person~~an individual incapable of safely hunting or being afield with a gun or other firearm or a bow and arrow, and "chemical test" means any test or tests to determine the ~~alcoholic, or other drug~~alcohol concentration or presence of other drugs, or combination thereof, ~~content of in the individual's blood, breath, saliva, or urine~~, approved by the director of the state crime laboratory or the director's designee under this chapter. The chemical test must be administered at the direction of a game warden or a law enforcement officer only after placing the ~~person~~individual, except ~~persons~~individuals mentioned in section 20.1-15-04, under arrest and informing that ~~person~~individual that the ~~person~~individual is or will be charged with the offense of being afield with a gun or other firearm or a bow and arrow while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a minor under section 27-20-13 satisfies the requirement of an arrest. The game warden or law enforcement officer shall also inform the ~~person~~individual charged that refusal of the ~~person~~individual to submit to the chemical test determined appropriate will result in a revocation of up to four years of the ~~person's~~individual's hunting privileges. The game warden or law enforcement officer shall determine the chemical test to be used. When a minor is taken into custody for violating section 20.1-01-06, the game warden or law enforcement officer shall diligently attempt to contact the minor's parent or legal guardian to explain the cause for the custody and the implied consent chemical testing requirements. Neither the game warden or 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.

**SECTION 7. AMENDMENT.** Section 20.1-15-03 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-15-03. PersonsIndividuals qualified to administer chemical test and opportunity for additional test.**

Only an individual medically qualified to draw blood, acting at the request of a game warden or a law enforcement officer, may withdraw blood for the purpose of determining the ~~alcoholic, drug~~alcohol concentration or presence of other drugs, or combination thereof, ~~content of in the individual's blood~~. The director of the state crime laboratory or the director's designee shall determine the qualifications or credentials for being medically qualified to draw blood and shall issue a list of approved designations, including medical doctor and registered nurse. This limitation does not apply to the taking of a breath, ~~saliva~~, or urine specimen. The director of the state crime laboratory, or the director's designee, shall electronically post a copy of the certified list of approved designations, including medical doctor and registered nurse, with the state crime laboratory division of the attorney general at the attorney general website and shall make the certified records required by this section available for download in a printable format on the attorney general website. The ~~person~~individual tested may have an individual of that ~~person's~~individual's own choosing, who is

medically qualified to draw blood, administer a chemical test in addition to any administered at the direction of a game warden or a law enforcement officer with all costs of the additional chemical test to be the responsibility of the ~~person~~individual charged. The failure or inability to obtain an additional chemical test by a ~~person~~an individual does not preclude the admission of the chemical test taken at the direction of a game warden or a law enforcement officer. Upon the request of the ~~person~~individual who is tested, a copy of the operational checklist and test record of a breath sample test or analytical report of a blood, ~~or urine, or saliva~~ sample test taken at the direction of the game warden or law enforcement officer must be made available to that ~~person~~individual by the department or law enforcement agency that administered the chemical test.

**SECTION 8. AMENDMENT.** Subsections 2 and 3 of section 20.1-15-05 of the North Dakota Century Code are amended and reenacted as follows:

2. If a chemical test administered under section 20.1-15-01 or 20.1-15-04 was by ~~saliva or urine~~ sample or by drawing blood as provided in section 20.1-15-03 and the ~~person~~individual tested does not reside in an area in which the game warden or law enforcement officer has jurisdiction, the game warden or law enforcement officer shall, on receiving the analysis of the ~~saliva, urine,~~ or blood from the director of the state crime laboratory or the director's designee and if the analysis shows that ~~person~~individual had an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that ~~person's~~individual's reappearance within the game warden's or officer's jurisdiction or notify a game warden or law enforcement agency having jurisdiction where the ~~person~~individual resides. On that notification, that game warden or law enforcement agency shall immediately issue a statement of intent to revoke, suspend, or deny hunting privileges and take possession of the ~~person's~~individual's hunting license if it is then available and, within twenty-four hours, forward the license to the game warden or law enforcement agency making the arrest or to the director. The issuance of a statement of intent to revoke, suspend, or deny hunting privileges and the taking of possession of the ~~person's~~individual's hunting license serves as the director's official notification to the ~~person~~individual of the director's intent to revoke, suspend, or deny hunting privileges in this state.
3. The game warden or law enforcement officer, within five days of issuing the statement of intent and taking possession of the hunting license, shall forward to the director a certified written report in the form required by the director and the ~~person's~~individual's hunting license taken under subsection 1 or 2. If the notice was given and the license was taken because of the results of a chemical test, the report must show that the game warden or officer had reasonable grounds to believe the ~~person~~individual had been afield with a gun or other firearm or a bow and arrow while in violation of section 20.1-01-06, that the ~~person~~individual was lawfully arrested, that the ~~person~~individual was chemically tested under this chapter, and that the results of the test show that the ~~person~~individual had an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight. In addition to the report, the game warden or law enforcement officer shall forward to the director a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood, ~~saliva,~~ or urine test for all tests administered at the direction of the game warden or officer.



**SECTION 9. AMENDMENT.** Subsections 2 and 4 of section 20.1-15-08 of the North Dakota Century Code are amended and reenacted as follows:

2. If the issue to be determined by the hearing concerns suspension of hunting privileges for being afield with a gun or other firearm or a bow and arrow while having an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight, the hearing must be before a hearing officer assigned by the director and at a time and place designated by the director. The hearing must be recorded and its scope may cover only the issues of whether the arresting warden or officer had reasonable grounds to believe the ~~person~~individual had been afield with a gun or other firearm or bow and arrow in violation of section 20.1-01-06; whether the ~~person~~individual was placed under arrest; whether the ~~person~~individual was tested in accordance with section 20.1-15-01 or 20.1-15-04 and, if applicable, section 20.1-15-03; and whether the chemical test results show the ~~person~~individual had an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood, ~~or urine, or saliva~~ sample from the director of the state crime laboratory or the director's designee, or a certified copy of the checklist and test records from a certified breath test operator establish prima facie the alcohol, other drug, or a combination thereof concentration shown therein. Whether the ~~person~~individual was informed that the privilege to hunt might be suspended based on the results of the chemical test is not an issue.
  
4. At a hearing under this section, the regularly kept records of the director and the state crime laboratory may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director and the state crime laboratory: ~~any~~
  - a. Any copy of a certified copy of an analytical report of a blood, ~~or urine, or saliva~~ sample received by the director from the director of the state crime laboratory or the director's designee or a game warden or a law enforcement officer, ~~or~~ a certified copy of the checklist and test records received by the director from a certified breath test operator; ~~and any~~
  
  - b. Any copy of a certified copy of a certificate of the director of the state crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol; ~~other drug concentration or the presence of other drugs,~~ or a combination thereof ~~concentration,~~ received by the director from the director of the state crime laboratory or the director's designee, ~~or the recorder, unless the board of county commissioners has designated a different official to maintain the certificate that have been electronically posted with the state crime laboratory division of the attorney general at the attorney general website.~~

**SECTION 10. AMENDMENT.** Section 20.1-15-11 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-15-11. Interpretation of chemical tests.**

Upon the trial of any action or proceeding arising out of acts alleged to have been committed by any ~~person~~individual while being afield with a gun or other firearm or a bow and arrow while under the influence of intoxicating liquor, drugs, or a combination

thereof, evidence of the amount of alcohol, concentration or presence of other drugs, or a combination thereof, in the ~~person's~~individual's blood, breath, or urine at the time of the act alleged as shown by a chemical analysis of the blood, breath, ~~saliva,~~ or urine is admissible. For the purpose of this section:

1. ~~A person~~An individual having, at that time, an alcohol, other drug, or a combination thereof concentration of not more than five one-hundredths of one percent by weight is presumed not to be under the influence of intoxicating liquor, drugs, or a combination thereof.
2. Evidence that there was at that time more than five one-hundredths of one percent by weight alcohol, other drug, or a combination thereof concentration in ~~a person~~an individual is relevant evidence, but it is not to be given prima facie effect in indicating whether the ~~person~~individual was under the influence of intoxicating liquor, drugs, or a combination thereof.
3. ~~A person~~An individual having an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after being afield with a gun or other firearm or a bow and arrow is under the influence of intoxicating liquor, drugs, or a combination thereof at the time of being afield with a gun or other firearm or bow and arrow.
4. Alcohol concentration is based upon grams of alcohol per one hundred ~~cubic centimeters~~milliliters of blood or grams of alcohol per two hundred ten liters of end expiratory breath or grams of alcohol per sixty-seven ~~cubic centimeters~~milliliters of urine.
5. The results of the chemical test must be received in evidence when it is shown that the sample was properly obtained and the test was fairly administered, and if the test is shown to have been performed according to methods and with devices approved by the director of the state crime laboratory or the director's designee, and by an individual possessing a certificate of qualification to administer the test issued by the director of the state crime laboratory or the director's designee. The director of the state crime laboratory or the director's designee is authorized to approve satisfactory devices and methods of chemical tests and determine the qualifications of individuals to conduct such tests, and shall issue a certificate to every qualified operator. An operator shall exhibit the certificate upon demand of the ~~person~~individual requested to take the chemical test.
6. The director of the state crime laboratory or the director's designee may appoint, train, certify, and supervise field inspectors of breath testing equipment and its operation, and the inspectors shall report the findings of any inspection to the director of the state crime laboratory or the director's designee for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the ~~persons~~individuals qualified to administer them, the director of the state crime laboratory or the director's designee shall prepare, certify, and ~~file~~electronically post a written record of the approval with the ~~director and the recorder in each county, unless the board of county commissioners designates a different official~~state crime laboratory division of the attorney general at the attorney general website, and shall include in the record:

- a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
  - b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.
  - c. The operational checklist and forms prescribing the methods currently approved by the director of the state crime laboratory or the director's designee in using the devices during the administration of the tests.
  - d. ~~The material filed~~certified records electronically posted under this section may be supplemented when the director of the state crime laboratory or the director's designee determines it to be necessary, and any certified supplemental material has records have the same force and effect as the ~~material that it supplements~~records that are supplemented.
  - e. The state crime laboratory shall make the certified records required by this section available for download in a printable format on the attorney general website.
7. Copies of the state crime laboratory certified records referred to in subsections 5 and 6, ~~certified by the recorder, or designated official, that have been electronically posted with the state crime laboratory division of the attorney general at the attorney general website~~ must be admitted as prima facie evidence of the matters stated in the records.
  8. A certified copy of the analytical report of a blood, or urine, ~~or saliva~~ test issued by the director of the state crime laboratory or the director's designee must be accepted as prima facie evidence of the results of a chemical test performed under this chapter.
  9. Notwithstanding any statute or rule to the contrary, the defendant in any criminal proceeding may subpoena, without cost to the defendant, the ~~person~~individual who conducted the chemical test referred to in this section to testify at the trial on the issue of the amount of alcohol, concentration or presence of other drugs, or a combination thereof in the defendant's blood, breath, ~~saliva~~, or urine at the time of the alleged act.
  10. A signed statement from the individual medically qualified to draw the blood sample for testing as set forth in subsection 5 is prima facie evidence that the blood sample was properly drawn and no further foundation for the admission of this evidence may be required.

**SECTION 11. AMENDMENT.** Section 20.1-15-15 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-15-15. Screening tests.**

Any ~~person~~individual who is afield with a gun or other firearm or a bow and arrow is deemed to have given consent to submit to an onsite screening test of the ~~person's~~individual's breath for the purpose of estimating the alcohol, ~~other drug, or a combination thereof~~ concentration in the ~~person's blood~~individual's breath upon the request of a game warden or a law enforcement officer who has reason to believe and has, through the officer's observations, formulated an opinion that the ~~person's~~individual's body contains alcohol, ~~other drugs, or a combination thereof~~. A

~~person~~An individual may not be required to submit to a screening test of breath while at a hospital as a patient if the medical practitioner in immediate charge of the ~~person's~~individual's case is not first notified of the proposal to make the requirement or objects to the test on the ground that such would be prejudicial to the proper care or treatment of the patient. The screening test must be performed by a game warden or an enforcement officer certified as a chemical test operator by the director of the state crime laboratory or the director's designee and according to methods and with devices approved by the director of the state crime laboratory or the director's designee. The results of the screening test must be used only for determining whether a further test is to be given under the provisions of section 20.1-15-01. The officer shall inform the ~~person's~~individual that refusal of the ~~person's~~individual to submit to a screening test will result in a revocation for up to four years of that ~~person's~~individual's hunting privileges. If the ~~person's~~individual refuses to submit to the screening test, none may be given, but the refusal is sufficient cause to revoke the ~~person's~~individual's hunting privileges in the same manner as provided in section 20.1-15-06, and a hearing as provided in section 20.1-15-08 and a judicial review as provided in section 20.1-15-09 must be available. However, the director may not revoke a ~~person's~~an individual's hunting privileges for refusing to submit to a screening test requested under this section if the ~~person's~~individual provides a sufficient breath, blood, or urine sample for a chemical test requested under section 20.1-15-01 for the same incident. This section does not supersede any provisions of sections 20.1-15-01 through 20.1-15-14, nor does any provision of sections 20.1-15-01 through 20.1-15-14 supersede this section except as provided herein. For the purposes of this section, "chemical test operator" means a ~~person's~~an individual certified by the director of the state crime laboratory or the director's designee as qualified to perform analysis for alcohol, other drugs, or a combination thereof in a ~~person's~~an individual's blood, breath, ~~saliva~~, or urine.

**SECTION 12. AMENDMENT.** Subsection 4 of section 39-06.2-10.6 of the North Dakota Century Code is amended and reenacted as follows:

4. At a hearing under this section, the regularly kept records of the director and the state crime laboratory may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director and the state crime laboratory: ~~any~~
  - a. Any copy of a certified copy of an analytical report of a blood or urine sample received by the director from the director of the state crime laboratory or the director's designee or a law enforcement officer, a certified copy of the checklist and test records received by the director from a certified breath test operator; ~~and any~~
  - b. Any copy of a certified copy of a certificate of the director of the state crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol concentration received by the director from the director of the state crime laboratory or the director's designee, ~~or the recorder, unless the board of county commissioners has designated a different official to maintain the certificate that have been electronically posted with the state crime laboratory division of the attorney general at the attorney general website.~~

**SECTION 13. 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 ~~drug content~~presence of blood~~drugs~~.**

Any ~~person~~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, ~~other drug~~ concentration or presence of other drugs, or combination thereof, ~~content of~~ in the individual's blood, breath, or urine. As used in this chapter, the word "drug" means any drug or substance or combination of drugs or substances which renders a ~~person~~an individual incapable of safely driving, and the words "chemical test" or "chemical analysis" mean any test to determine the alcohol, ~~or other drug~~ concentration or presence of other drugs, or combination thereof, ~~content of~~ in the individual's blood, breath, ~~saliva~~, or urine, approved by the director of the state crime laboratory or the director's designee under this chapter. The test or tests must be administered at the direction of a law enforcement officer only after placing the ~~person~~individual, except ~~persons~~individuals mentioned in section 39-20-03, under arrest and informing that ~~person~~individual that the ~~person~~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 the purposes of this chapter, the taking into custody of a child under section 27-20-13 or a ~~person~~an individual under twenty-one years of age satisfies the requirement of an arrest. The law enforcement officer shall also inform the ~~person~~individual charged that refusal of the ~~person~~individual to submit to the test determined appropriate will result in a revocation for up to four years of the ~~person's~~individual's driving privileges. The law enforcement officer shall determine which of the tests is to be used. When a ~~person~~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 ~~person's~~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 ~~person~~individual in custody.

**SECTION 14. AMENDMENT.** Section 39-20-02 of the North Dakota Century Code is amended and reenacted as follows:

**39-20-02. PersonsIndividuals qualified to administer test and opportunity for additional test.**

Only an individual medically qualified to draw blood, acting at the request of a law enforcement officer, may withdraw blood for the purpose of determining the alcohol, ~~drug~~ concentration or presence of other drugs, or combination thereof, ~~content therein~~ in the individual's blood. The director of the state crime laboratory or the director's designee shall determine the qualifications or credentials for being medically qualified to draw blood, and shall issue a list of approved designations including medical doctor and registered nurse. This limitation does not apply to the taking of a breath, ~~saliva~~, or urine specimen. The director of the state crime

laboratory, or the director's designee, shall electronically post a copy of the certified list of approved designations, including medical doctor and registered nurse, with the state crime laboratory division of the attorney general at the attorney general website and shall make the certified records required by this section available for download in a printable format on the attorney general website. The ~~person~~individual tested may have an individual of the ~~person's~~individual's choosing, who is medically qualified to draw blood, administer a chemical test or tests in addition to any administered at the direction of a law enforcement officer with all costs of an additional test or tests to be the sole responsibility of the ~~person~~individual charged. The failure or inability to obtain an additional test by a ~~person~~an individual does not preclude the admission of the test or tests taken at the direction of a law enforcement officer. Upon the request of the ~~person~~individual who is tested, a copy of the operational checklist and test record of a breath sample test or analytical report of a blood, or urine, ~~or saliva~~ sample test taken at the direction of the law enforcement officer must be made available to that ~~person~~individual by the law enforcement agency that administered the test or tests.

**SECTION 15. AMENDMENT.** Subsections 2, 3, and 4 of section 39-20-03.1 of the North Dakota Century Code are amended and reenacted as follows:

2. If a test administered under section 39-20-01 or 39-20-03 was by ~~saliva or~~ urine sample or by drawing blood as provided in section 39-20-02 and the ~~person~~individual tested is not a resident of an area in which the law enforcement officer has jurisdiction, the law enforcement officer shall, on receiving the analysis of the ~~saliva, urine, or~~ blood from the director of the state crime laboratory or the director's designee and if the analysis shows that ~~person~~individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a ~~person~~an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that ~~person's~~individual's reappearance within the officer's jurisdiction, proceed in accordance with subsection 3, or notify a law enforcement agency having jurisdiction where the ~~person~~individual lives. On that notification, that law enforcement agency shall, within twenty-four hours, forward a copy of the temporary operator's permit to the law enforcement agency making the arrest or to the director. The law enforcement agency shall issue to that ~~person~~individual a temporary operator's permit as provided in this section, and shall sign and date the permit as provided in subsection 1.
3. If the test results indicate an alcohol concentration at or above the legal limit, the law enforcement agency making the arrest may mail a temporary operator's permit to the ~~person~~individual who submitted to the blood, or urine, ~~or saliva~~ test, whether or not the ~~person~~individual is a resident of the area in which the law enforcement officer has jurisdiction. The third day after the mailing of the temporary operator's permit is considered the date of issuance. Actual notice of the opportunity for a hearing under this section is deemed to have occurred seventy-two hours after the notice is mailed by regular mail to the address submitted by the ~~person~~individual to the law enforcement officer. The temporary operator's permit serves as the director's official notification to the ~~person~~individual of the director's intent to revoke, suspend, or deny driving privileges in this state.
4. The law enforcement officer, within five days of the issuance of the temporary operator's permit, shall forward to the director a certified written report in the form required by the director. If the ~~person~~individual was issued a temporary operator's permit because of the results of a test, the report must show that the officer had reasonable grounds to believe the ~~person~~individual had been

driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01, or equivalent ordinance, that the ~~person~~individual was lawfully arrested, that the ~~person~~individual was tested for alcohol concentration under this chapter, and that the results of the test show that the ~~person~~individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a ~~person~~an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. In addition to the operator's license and report, the law enforcement officer shall forward to the director a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood, ~~saliva~~, or urine test for all tests administered at the direction of the officer.

**SECTION 16. AMENDMENT.** Subsections 2 and 3 of section 39-20-03.2 of the North Dakota Century Code are amended and reenacted as follows:

2. If the test was administered by ~~saliva~~ or urine sample or by drawing blood, the law enforcement officer, on reviewing the alcohol concentration analysis showing the ~~person~~individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a ~~person~~an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, shall mail or issue to the ~~person~~individual a notification of the test results, a temporary operator's permit extending nonresident operating privileges in this state for twenty-five days from the date of mailing or issuance or until earlier terminated by the decision of a hearing officer under section 39-20-05, and notice of the intent to revoke, suspend, or deny driving privileges in this state, together with the notice provided under section 39-06.1-07 of the procedures available under this chapter. The temporary operator's permit must be signed and dated by the officer. The third day after the mailing of the temporary operator's permit is considered the date of issuance.
3. The law enforcement officer, within five days of issuing the temporary operator's permit, shall forward to the director a certified written report in the form required by the director and a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood, ~~saliva~~, or urine test for all tests administered at the direction of the officer. If the ~~person~~individual was issued a temporary operator's permit because of the ~~person's~~individual's refusal to submit to a test under sections 39-20-01 and 39-20-14, the report must include information as provided in section 39-20-04. If the ~~person~~individual was issued a temporary operator's permit because of the results of a test, the report must show that the officer had reasonable grounds to believe the ~~person~~individual had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01, or equivalent ordinance, that the ~~person~~individual was lawfully arrested, that the ~~person~~individual was tested for alcohol concentration under this chapter, and that the results of the test show that the ~~person~~individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a ~~person~~an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight.

**SECTION 17. AMENDMENT.** Subsections 2 and 4 of section 39-20-05 of the North Dakota Century Code are amended and reenacted as follows:

2. If the issue to be determined by the hearing concerns license suspension for operating a motor vehicle while having an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a ~~person~~ individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, the hearing must be before a hearing officer assigned by the director and at a time and place designated by the director. The hearing must be recorded and its scope may cover only the issues of whether the arresting officer had reasonable grounds to believe the ~~person~~ individual had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to a ~~person~~ individual under twenty-one years of age, the ~~person~~ individual had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the ~~person~~ individual was placed under arrest, unless the ~~person~~ individual was under twenty-one years of age and the alcohol concentration was less than eight one-hundredths of one percent by weight, then arrest is not required and is not an issue under any provision of this chapter; whether the ~~person~~ individual was tested in accordance with section 39-20-01 or 39-20-03 and, if applicable, section 39-20-02; and whether the test results show the ~~person~~ individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a ~~person~~ individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood, or urine, or saliva sample from the director of the state crime laboratory or the director's designee or a certified copy of the checklist and test records from a certified breath test operator establish prima facie the alcohol concentration or the presence of drugs, or a combination thereof, shown therein. Whether the ~~person~~ individual was informed that the privilege to drive might be suspended based on the results of the test is not an issue.
4. At a hearing under this section, the regularly kept records of the director and state crime laboratory may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director and state crime laboratory: ~~any~~
  - a. Any copy of a certified copy of an analytical report of a blood, or urine, or saliva sample received by the director from the director of the state crime laboratory or the director's designee or a law enforcement officer, or a certified copy of the checklist and test records received by the director from a certified breath test operator; ~~and any~~
  - b. Any copy of a certified copy of a certificate of the director of the state crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol concentration or the presence of drugs received by the director from the director of the state crime laboratory, or the director's designee, ~~or the recorder, unless the board of county commissioners has designated a different official to maintain the certificate that have been electronically posted with the state crime laboratory division of the attorney general at the attorney general website.~~

**SECTION 18. AMENDMENT.** Section 39-20-07 of the North Dakota Century Code is amended and reenacted as follows:



### 39-20-07. Interpretation of chemical tests.

Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any ~~person~~individual while driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor, drugs, or a combination thereof, evidence of the amount of alcohol, concentration or presence of other drugs, or a combination thereof, in the ~~person's~~individual's blood, breath, or urine at the time of the act alleged as shown by a chemical analysis of the blood, breath, ~~saliva,~~ or urine is admissible. For the purpose of this section:

1. ~~A person~~An individual having, at that time, an alcohol concentration of not more than five one-hundredths of one percent by weight is presumed not to be under the influence of intoxicating liquor. This presumption has no application to the administration of chapter 39-06.2.
2. Evidence that there was at that time more than five one-hundredths of one percent by weight alcohol concentration in a ~~person~~an individual is relevant evidence, but it is not to be given prima facie effect in indicating whether the ~~person~~individual was under the influence of intoxicating liquor.
3. ~~A person~~An individual having an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a ~~person~~an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after driving or being in physical control of a vehicle is under the influence of intoxicating liquor at the time of driving or being in physical control of a vehicle.
4. Alcohol concentration is based upon grams of alcohol per one hundred milliliters of blood or grams of alcohol per two hundred ten liters of end expiratory breath or grams of alcohol per sixty-seven milliliters of urine.
5. The results of the chemical analysis must be received in evidence when it is shown that the sample was properly obtained and the test was fairly administered, and if the test is shown to have been performed according to methods and with devices approved by the director of the state crime laboratory or the director's designee, and by an individual possessing a certificate of qualification to administer the test issued by the director of the state crime laboratory or the director's designee. The director of the state crime laboratory or the director's designee is authorized to approve satisfactory devices and methods of chemical analysis and determine the qualifications of individuals to conduct such analysis, and shall issue a certificate to all qualified operators who exhibit the certificate upon demand of the ~~person~~individual requested to take the chemical test.
6. The director of the state crime laboratory or the director's designee may appoint, train, certify, and supervise field inspectors of breath testing equipment and its operation, and the inspectors shall report the findings of any inspection to the director of the state crime laboratory or the director's designee for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the ~~persons~~individuals qualified to administer them, the director of the state crime laboratory or the director's designee shall prepare, certify, and ~~file~~electronically post a written record of the approval with the ~~director and the recorder in each county, unless the board of county commissioners designates a different official~~state crime

laboratory division of the attorney general at the attorney general website, and shall include in the record:

- a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
  - b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.
  - c. The operational checklist and forms prescribing the methods currently approved by the director of the state crime laboratory or the director's designee in using the devices during the administration of the tests.
  - d. ~~The material filed~~ certified records electronically posted under this section may be supplemented when the director of the state crime laboratory or the director's designee determines it to be necessary, and any certified supplemental material has records have the same force and effect as the ~~material that it supplements~~ records that are supplemented.
  - e. The state crime laboratory shall make the certified records required by this section available for download in a printable format on the attorney general website.
7. Copies of the state crime laboratory certified records referred to in subsections 5 and 6, ~~certified by the recorder, or designated official, that have been electronically posted with the state crime laboratory division of the attorney general at the attorney general website~~ must be admitted as prima facie evidence of the matters stated in the records.
  8. A certified copy of the analytical report of a blood, or urine, or saliva analysis referred to in subsection 5 and which is issued by the director of the state crime laboratory or the director's designee must be accepted as prima facie evidence of the results of a chemical analysis performed under this chapter. The certified copy satisfies the directives of subsection 5.
  9. Notwithstanding any statute or rule to the contrary, a defendant who has been found to be indigent by the court in the criminal proceeding at issue may subpoena, without cost to the defendant, the ~~person~~ individual who conducted the chemical analysis referred to in this section to testify at the trial on the issue of the amount of alcohol, concentration or presence of other drugs, or a combination thereof in the defendant's blood, breath, ~~saliva,~~ or urine at the time of the alleged act. If the state toxicologist, the director of the state crime laboratory, or any employee of either, is subpoenaed to testify by a defendant who is not indigent and the defendant does not call the witness to establish relevant evidence, the court shall order the defendant to pay costs to the witness as provided in section 31-01-16. An indigent defendant may also subpoena the individual who withdrew the defendant's blood by following the same procedure.
  10. A signed statement from the individual medically qualified to draw the blood sample for testing as set forth in subsection 5 is prima facie evidence that the blood sample was properly drawn and no further foundation for the admission of this evidence may be required.

**SECTION 19. AMENDMENT.** Section 39-20-14 of the North Dakota Century Code is amended and reenacted as follows:

**39-20-14. Screening tests.**

Any ~~person~~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 ~~person's~~individual's breath for the purpose of estimating the alcohol ~~content of~~concentration in the ~~person's blood~~individual's breath upon the request of a law enforcement officer who has reason to believe that the ~~person~~individual committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the ~~person's~~individual's body contains alcohol. A ~~person~~An individual may not be required to submit to a screening test or tests of breath while at a hospital as a patient if the medical practitioner in immediate charge of the ~~person's~~individual's case is not first notified of the proposal to make the requirement, or objects to the test or tests on the ground that such would be prejudicial to the proper care or treatment of the patient. The screening test or tests must be performed by an enforcement officer certified as a chemical test operator by the director of the state crime laboratory or the director's designee and according to methods and with devices approved by the director of the state crime laboratory or the director's designee. The results of such screening test must be used only for determining whether or not a further test shall be given under the provisions of section 39-20-01. The officer shall inform the ~~person~~individual that refusal of the ~~person~~individual to submit to a screening test will result in a revocation for up to four years of that ~~person's~~individual's driving privileges. If such ~~person~~individual refuses to submit to such screening test or tests, none may be given, but such refusal is sufficient cause to revoke such ~~person's~~individual's license or permit to drive in the same manner as provided in section 39-20-04, and a hearing as provided in section 39-20-05 and a judicial review as provided in section 39-20-06 must be available. However, the director must not revoke a ~~person's~~an individual's driving privileges for refusing to submit to a screening test requested under this section if the ~~person~~individual provides a sufficient breath, blood, or urine sample for a chemical test requested under section 39-20-01 for the same incident. No provisions of this section may supersede any provisions of chapter 39-20, nor may any provision of chapter 39-20 be construed to supersede this section except as provided herein. For the purposes of this section, "chemical test operator" means a ~~person~~an individual certified by the director of the state crime laboratory or the director's designee as qualified to perform analysis for alcohol in a ~~person's~~an individual's blood, breath, saliva, or urine.

**SECTION 20. AMENDMENT.** Section 39-24.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**39-24.1-01. Implied consent to determine alcohol concentration and drug content~~presence of blood~~drugs.**

A ~~person~~An individual who operates a snowmobile on any public land or private land with public access is deemed to have given consent, and shall consent, subject to this chapter, to a chemical test, or tests, of the blood, breath, ~~saliva~~, or urine for the purpose of determining the alcohol, ~~other drug~~ concentration or presence of other drugs, or combination thereof, ~~content of in~~ the individual's blood, breath, or urine. As used in this chapter, the definitions in section 39-24-01 apply, and in addition, "chemical test" means any test or tests to determine the alcohol, ~~or other drug~~ concentration or presence of other drugs, or combination thereof, ~~content of in~~ the individual's blood, breath, ~~saliva~~, or urine, approved by the director of the state crime

laboratory or the director's designee under this chapter; and "drug" means any drug or substance or combination of drugs or substances which renders a ~~person an~~ individual incapable of safely operating a snowmobile. The chemical test must be administered at the direction of a law enforcement officer only after placing the ~~person~~individual, except ~~persons~~individuals mentioned in section 39-24.1-04, under arrest and informing that ~~person~~individual that the ~~person~~individual is or will be charged with the offense of operating a snowmobile while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a minor under section 27-20-13 satisfies the requirement of an arrest. The law enforcement officer shall also inform the ~~person~~individual charged that refusal of the ~~person~~individual to submit to the chemical test determined appropriate will result in that ~~person~~individual being prohibited from operating a snowmobile for up to three years. The law enforcement officer shall determine the chemical test to be used. When a minor is taken into custody for violating subdivision c of subsection 5 of section 39-24-09, the law enforcement officer shall diligently attempt to contact the minor's parent or legal guardian to explain the cause for the custody and the implied consent chemical testing requirements. 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.

**SECTION 21. AMENDMENT.** Section 39-24.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**39-24.1-03. ~~Persons~~Individuals qualified to administer chemical test and opportunity for additional test.**

Only an individual medically qualified to draw blood, acting at the request of a law enforcement officer, may withdraw blood for the purpose of determining the alcohol, ~~drug~~ concentration or presence of other drugs, or combination thereof, ~~content of~~ in the individual's blood. The director of the state crime laboratory or the director's designee shall determine the qualifications or credentials for being medically qualified to draw blood, and shall issue a list of approved designations including medical doctor and registered nurse. This limitation does not apply to the taking of a breath, ~~saliva~~, or urine specimen. The director of the state crime laboratory, or the director's designee, shall electronically post a copy of the certified list of approved designations, including medical doctor and registered nurse, with the state crime laboratory division of the attorney general at the attorney general website and shall make the certified records required by this section available for download in a printable format on the attorney general website. The ~~person~~individual tested may have an individual of that ~~person's~~individual's own choosing, who is medically qualified to draw blood, administer a chemical test in addition to any administered at the direction of a law enforcement officer with all costs of the additional chemical test to be the responsibility of the ~~person~~individual charged. The failure or inability to obtain an additional chemical test by a ~~person~~individual does not preclude the admission of the chemical test taken at the direction of a law enforcement officer. Upon the request of the ~~person~~individual who is tested, a copy of the operational checklist and test record of a breath sample test or analytical report of a blood, ~~or urine, or saliva~~ sample test taken at the direction of the law enforcement officer must be made available to that ~~person~~individual by the law enforcement agency that administered the chemical test.

**SECTION 22. AMENDMENT.** Section 39-24.1-08 of the North Dakota Century Code is amended and reenacted as follows:

### 39-24.1-08. Interpretation of chemical tests.

Upon the trial of any action or proceeding arising out of acts alleged to have been committed by any ~~person~~individual while operating a snowmobile while under the influence of intoxicating liquor, drugs, or a combination thereof, evidence of the amount of alcohol, concentration or presence of other drugs, or a combination thereof, in the ~~person's~~individual's blood, breath, or urine at the time of the act alleged as shown by a chemical analysis of the blood, breath, ~~saliva,~~ or urine is admissible. For the purpose of this section:

1. ~~A person~~An individual having a drug in that ~~person's~~individual's body or an alcohol concentration of at least ten one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after operating a snowmobile is under the influence of intoxicating liquor, drugs, or a combination thereof at the time of operating a snowmobile.
2. Alcohol concentration is based upon grams of alcohol per one hundred ~~cubic centimeters~~milliliters of blood or grams of alcohol per two hundred ten liters of end expiratory breath or grams of alcohol per sixty-seven ~~cubic centimeters~~milliliters of urine.
3. The results of the chemical test must be received in evidence when it is shown that the sample was properly obtained and the test was fairly administered, and if the test is shown to have been performed according to methods and with devices approved by the director of the state crime laboratory or the director's designee, and by an individual possessing a certificate of qualification to administer the test issued by the director of the state crime laboratory or the director's designee. The director of the state crime laboratory or the director's designee is authorized to approve satisfactory devices and methods of chemical tests and determine the qualifications of individuals to conduct such tests, and shall issue a certificate to every qualified operator. An operator shall exhibit the certificate upon demand of the ~~person~~individual requested to take the chemical test.
4. The director of the state crime laboratory or the director's designee may appoint, train, certify, and supervise field inspectors of breath testing equipment and its operation, and the inspectors shall report the findings of any inspection to the director of the state crime laboratory or the director's designee for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the ~~persons~~individuals qualified to administer them, the director of the state crime laboratory or the director's designee shall prepare, certify, and ~~file~~electronically post a written record of the approval with the director ~~and the recorder in each county, unless the board of county commissioners designates a different official~~state crime laboratory division of the attorney general at the attorney general website, and shall include in the record:
  - a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
  - b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.

- c. The operational checklist and forms prescribing the methods currently approved by the director of the state crime laboratory or the director's designee in using the devices during the administration of the tests.
  - d. ~~The material filed~~certified records electronically posted under this ~~subsection~~section may be supplemented when the director of the state crime laboratory or the director's designee determines it to be necessary, and any certified supplemental ~~material has~~records have the same force and effect as the ~~material that it supplements~~records that are supplemented.
  - e. The state crime laboratory shall make the certified records required by this section available for download in a printable format on the attorney general website.
5. Copies of the state crime laboratory certified records referred to in subsections 3 and 4, ~~certified by the recorder, or designated official, that have been electronically posted with the state crime laboratory division of the attorney general at the attorney general website~~ must be admitted as prima facie evidence of the matters stated in the records.
  6. A certified copy of the analytical report of a blood, or urine, ~~or saliva~~ test issued by the director of the state crime laboratory or the director's designee must be accepted as prima facie evidence of the results of a chemical test performed under this chapter.
  7. Notwithstanding any statute or rule to the contrary, the defendant in any criminal proceeding may subpoena, without cost to the defendant, the ~~person~~individual who conducted the chemical test referred to in this section to testify at the trial on the issue of the amount of alcohol, concentration or presence of other drugs, or a combination thereof, in the defendant's blood, breath, ~~saliva,~~ or urine at the time of the alleged act.
  8. A signed statement from the individual medically qualified to draw the blood sample for testing as set forth in subsection 3 is prima facie evidence that the blood sample was properly drawn and no further foundation for the admission of this evidence may be required.

Approved April 27, 2011  
Filed April 27, 2011

## CHAPTER 289

### HOUSE BILL NO. 1173

(Representatives Gruchalla, Koppelman, Ruby, Guggisberg)  
(Senators Nething, Wardner, Schneider)

AN ACT to amend and reenact section 39-21-01 of the North Dakota Century Code, relating to when headlamps and taillamps are required to be illuminated on a motor vehicle.

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

**SECTION 1. AMENDMENT.** Section 39-21-01 of the North Dakota Century Code is amended and reenacted as follows:

#### **39-21-01. When lighted lamps are required.**

Subject to ~~the exceptions with respect to~~for parked vehicles, every vehicle upon a highway within this state must display lighted ~~lamps, headlamps, taillamps,~~ and illuminating devices as required in this chapter for different classes of vehicles as follows:

1. At any time from sunset to sunrise, and every farm tractor upon a highway within this state at any time from a half hour after sunset to a half hour before sunrise;
2. At any time when it is raining, snowing, sleeting, or hailing or during other adverse driving conditions and these conditions do not render a person or vehicle on the highway clearly discernible at a distance of one thousand feet [304.8 meters] ahead; or
3. At any other time when visibility is impaired by weather, smoke, fog, or other conditions, or when there is insufficient light to render a person or vehicle on the highway clearly discernible at a distance of one thousand feet [304.8 meters] ahead.

Stoptlights, turn signals, and other signaling devices must be lighted as prescribed for the use of ~~such~~these devices.

Approved April 26, 2011  
Filed April 26, 2011

## CHAPTER 290

### HOUSE BILL NO. 1319

(Representatives Vigesaa, Ruby)  
(Senator G. Lee)

AN ACT to amend and reenact section 39-21-45 of the North Dakota Century Code, relating to air-conditioning equipment in motor vehicles; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 39-21-45 of the North Dakota Century Code is amended and reenacted as follows:

##### **39-21-45. Air-conditioning equipment.**

1. The term "air-conditioning equipment", as used or referred to in this section, means mechanical vapor compression refrigeration equipment which is used to cool the driver's or passenger compartment of any motor vehicle.
2. Air-conditioning equipment must be manufactured, installed, and maintained with due regard for the safety of the occupants of the vehicle and the public and may not contain any refrigerant which is toxic to persons or which is flammable, unless the refrigerant is included in the list published by the United States environmental protection agency as a safe alternative motor vehicle air-conditioning substitute for chlorofluorocarbon-12, pursuant to 42 U.S.C. 7671k(c).
3. The department may adopt and enforce safety requirements, rules, and specifications consistent with the requirements of this section applicable to equipment which must correlate with and, so far as possible, conform to the current recommended practice or standard applicable to air-conditioning equipment approved by the society of automotive engineers.
4. No person may have for sale, offer for sale, sell, or equip any motor vehicle with any air-conditioning equipment unless it complies with the requirements of this section.
5. No person may operate on any highway any motor vehicle equipped with any air-conditioning equipment unless the equipment complies with the requirements of this section.

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

Approved April 4, 2011  
Filed April 4, 2011



## CHAPTER 291

### SENATE BILL NO. 2255

(Senator Wardner)

AN ACT to create and enact sections 39-22.1-01.1, 39-22.1-05, and 39-22.1-06 of the North Dakota Century Code, relating to the licensure of trailer dealers; and to amend and reenact sections 39-22-19, 39-22.1-01, 39-22.1-02, 39-22.1-03, and 39-22.1-04 of the North Dakota Century Code, relating to insurance for motor vehicle dealers and requirements for the licensing of trailer dealers; to provide a penalty; to provide an effective date; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 39-22-19 of the North Dakota Century Code is amended and reenacted as follows:

##### **39-22-19. Garage liability insurance requirement.**

Before the issuance of a motor vehicle dealer license, the applicant must provide proof to the department of a continuous policy of ~~garage~~ liability insurance for the business operation of the applicant which includes general, business automobile, and sales, repair, or service operations liability as is appropriate to the business operation. The insurance company that issued the policy must notify the department of any cancellation, suspension, or revocation of the coverage. Any motor vehicle dealer who fails to maintain the insurance coverage required by this section shall return the dealer license and dealer number plates to the department on or before the effective date of the cancellation, suspension, or revocation. Failure to return the dealer license or dealer number plates results in automatic revocation by operation of law. The department may order the superintendent to take possession of any dealer license or dealer number plates not returned to the department as required in this section. The department shall reinstate the dealer license and dealer number plates only when proof of insurance coverage is received.

**SECTION 2. AMENDMENT.** Section 39-22.1-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **39-22.1-01. Trailer dealer's license - Fees - Plates - Definition.**

Ne

1. A person, ~~partnership, corporation, or limited liability company~~ may not engage in the business of buying, selling, or exchanging of trailers, or advertise or hold ~~oneself or itself~~ out to the public as being in the business of buying, selling, or exchanging of trailers without first being licensed ~~to do so~~ as hereinafter provided.
2. Application for dealer's license and renewal license must be made to the director on ~~such~~ forms as the director prescribes and furnishes, and the application must be accompanied by an annual fee of thirty dollars for which must be issued one dealer plate. The applicant for an initial trailer dealer license shall submit a nonrefundable fee of one hundred dollars for the initial

inspection with the application. A dealer's license expires on December thirty-first of each year, and application for renewal of a dealer's license must be made on or before the expiration of the current dealer's license. 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.

3. A trailer dealer's license may be issued only to those who will maintain a permanent office and a primary established place of business and will abide by all the provisions of law pertaining to trailer dealers. In addition, the dealer shall maintain that person's business records in one central location.
4. Upon the payment of a fee of ten dollars for each additional plate, the director shall register and issue dealer's license plates for use on any trailers owned by the licensed dealer, and the trailers bearing the dealer's license plates may be lawfully operated upon the public highways of ~~the state of North Dakota~~ this state by the dealer ~~or the dealer's agents or representatives~~ during the year of the registration, in the direct functions of demonstrating, buying, selling, or transporting trailers. A dealer's license plates expire on December thirty-first of each year.
5. The term "trailer" as used in this chapter does not include those trailers exempt from registration in chapter 39-04.

**SECTION 3.** Section 39-22.1-01.1 of the North Dakota Century Code is created and enacted as follows:

**39-22.1-01.1. Primary established place of business - Penalty.**

1. If the licensee desires to move from the primary established place of business occupied when the license was granted to a new location, the licensee shall notify the director.
2. A licensed dealer may establish secondary trailer display lots in the conduct of the dealer's business. Secondary lots must be identified as a part of the licensed dealer's operation.
3. The department may assess a person violating this section a one hundred dollar fee for a first violation or a two hundred dollar fee for a second violation within two years of the first violation. The department may suspend the license of a trailer dealer licensed under this chapter if a third or subsequent violation of this section occurs within five years of the first violation.

**SECTION 4. AMENDMENT.** Section 39-22.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**39-22.1-02. Bond required.**

Before the issuance of or the renewal of a trailer dealer's license, as provided by law, the applicant for ~~such~~ the license shall furnish a continuous surety bond executed by the applicant as principal and executed by a surety company licensed and qualified to do business within the state of North Dakota, which must be in the amount of ten thousand dollars, and be conditioned upon the faithful compliance by ~~said~~ the applicant as a dealer, if ~~such~~ the license be issued to the applicant, that ~~such~~ the dealer will comply with all the laws of ~~the~~ this state of North Dakota pertaining to ~~such~~ the business, and regulating or being applicable to the business of ~~said~~ the dealer

as a dealer in trailers, and indemnifying any person dealing or transacting business with ~~such the~~ dealer in connection with any trailer from any loss or damage occasioned by the failure of ~~such the~~ dealer to comply with the ~~provisions of the laws of the this~~ state of North Dakota, including, but not limited to, the furnishing of a proper and valid certificate of title to the vendee of a trailer within fifteen days of the sale of ~~such the~~ trailer, and that ~~such the~~ bond shall be filed with the director ~~prior to before~~ the issuance of the license ~~herein provided for~~. ~~Provided, however~~ ~~However~~, that the aggregate liability of the surety to all ~~such~~ persons for all ~~such~~ losses or damages may, ~~in no event~~, ~~not~~ exceed the amount of ~~such the~~ bond. Any third party sustaining injury within the terms of the bond may proceed against the principal and surety without making the state a party to any ~~such~~ proceedings. Any applicant bonded ~~pursuant to the provisions of under~~ chapter 39-18 or 39-22 may not be required to furnish the surety bond provided for in this section ~~whenever~~ if the bond issued ~~pursuant to under~~ chapter 39-18 or 39-22 is written to include the requirements of this section. The bond may be canceled by the surety, as to future liability, by giving written notice by certified mail, addressed to the principal at the address stated in the bond, and to the department. Thirty days after the mailing of the notice, the bond is null and void as to any liability ~~thereafter~~ arising ~~after that thirty days~~. The surety remains liable, subject to the terms, conditions, and provisions of the bond, until the effective date of the cancellation.

**SECTION 5. AMENDMENT.** Section 39-22.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**39-22.1-03. Suspension of, denial, revocation, or cancellation of dealer's license - Penalty.**

The director may ~~suspend or revoke any dealer's license for failure of the licensee to comply with any of the laws of the state of North Dakota governing trailer dealers,~~ deny an application for a dealer's license or suspend, revoke, or cancel a dealer's license after it has been granted for making any material misstatement by an applicant in the application for a license; willfully failing to comply with this chapter; willfully violating a law relating to the sale, distribution, or financing of trailers; ceasing to have a primary established place of business; or for the failure failing to comply with the reasonable rules and regulations of the director as established under chapter 28-32, but no order suspending or revoking a dealer's license may be made without a hearing at which the licensee must be given an opportunity to be heard. Any dealer violating ~~the provisions~~ any provision of this chapter must be assessed a one hundred dollar fee by the department for a first violation and a two hundred dollar fee by the department for a second violation within two years of the first violation. The department shall suspend the license of a trailer dealer licensed under this chapter if a third or subsequent violation of the chapter occurs within five years of the first violation.

**SECTION 6. AMENDMENT.** Section 39-22.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**39-22.1-04. Penalty Examination of books and records.**

~~Any person who violates the provisions of this chapter is guilty of a class B misdemeanor.~~ The director or any duly authorized representative may inspect the pertinent books, letters, records, and contracts of any licensed trailer dealer or any other person relating to any complaint made against the dealer or person and held to be in violation of this chapter. In addition, any duly authorized representative of the department may inspect the records of any licensed dealer to verify that fees collected for the department have been properly remitted.

**SECTION 7.** Section 39-22.1-05 of the North Dakota Century Code is created and enacted as follows:

**39-22.1-05. Powers of the director.**

In addition to other powers provided by law, the director may:

1. Cancel, revoke, or suspend a dealer's license as provided for in section 39-22.1-03.
2. Adopt rules not inconsistent with this chapter governing the application for dealer's licenses and the cancellation or suspension or revocation of dealer's licenses.
3. Employ and pay any person as the director determines necessary to inspect dealers in this state or investigate dealers for information for the director to procure evidence in connection with any prosecution or other action to suspend, revoke, or cancel a dealer's license in relation to any matter in which the director has any duty to perform.

**SECTION 8.** Section 39-22.1-06 of the North Dakota Century Code is created and enacted as follows:

**39-22.1-06. Penalty.**

Any person who violates this chapter is guilty of a class B misdemeanor.

**SECTION 9. EFFECTIVE DATE.** Except as otherwise provided in this Act, this Act becomes effective on January 1, 2012.

**SECTION 10. EMERGENCY.** Section 1 of this Act is declared to be an emergency measure.

Approved April 26, 2011

Filed April 26, 2011

## CHAPTER 292

### HOUSE BILL NO. 1196

(Representatives Dahl, DeKrey, Grande)  
(Senators Nething, Oehlke, Robinson)

AN ACT to amend and reenact section 39-24.1-07 of the North Dakota Century Code, relating to operating a snowmobile while under the influence of alcohol or drugs; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 39-24.1-07 of the North Dakota Century Code is amended and reenacted as follows:

#### **39-24.1-07. Criminal penalties for operating snowmobile while having alcohol or drug concentrations.**

Upon conviction of a violation of subdivision c of subsection 5 of section 39-24-09, the court shall impose the following minimum penalties:

1. Notwithstanding subsection 7 of section 12.1-32-01, if the person's record indicates that, within the five years preceding the date of the offense, the person has not violated subdivision c of subsection 5 of section 39-24-09 or the person has not been prohibited from operating a snowmobile under this chapter, the offense is an infraction. The court shall impose a minimum fine of two hundred fifty dollars and, as a condition of that person's probation, shall prohibit that person from operating a snowmobile on all public land or private land with public access for sixty days within the snowmobile season that runs from December first through April first.
2. ~~Notwithstanding subsection 7 of section 12.1-32-01, if~~ the person's record indicates that, within the five years preceding the date of the offense, the person has one violation of subdivision c of subsection 5 of section 39-24-09 or the person has once been prohibited from operating a snowmobile under this chapter, the offense is ~~an infraction~~ a class B misdemeanor. The court shall impose a minimum fine of three hundred fifty dollars and, as a condition of that person's probation, shall prohibit that person from operating a snowmobile on all public land or private land with public access for one year from the date of the sentence.
3. If the person's record indicates that, within the five years preceding the date of the offense, the person has had at least two violations of subdivision c of subsection 5 of section 39-24-09 or the person has at least twice been prohibited from operating a snowmobile under this chapter, the offense is a class B misdemeanor. The court shall impose a minimum fine of four hundred fifty dollars and, as a condition of that person's probation, shall prohibit that person from operating a snowmobile on all public land or private land with public access for two years from the date of the sentence.

Approved April 11, 2011  
Filed April 11, 2011

# MUNICIPAL GOVERNMENT

## CHAPTER 293

### HOUSE BILL NO. 1313

(Representatives Guggisberg, Kreun, Streyle, Glasheim, S. Kelsh)  
(Senator Larsen)

AN ACT to create and enact a new section to chapter 40-01 of the North Dakota Century Code, relating to authorizing firefighters to solicit charitable contributions from motorists in cities; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 40-01 of the North Dakota Century Code is created and enacted as follows:

**Firefighters may solicit charitable contributions from motorists.**

Notwithstanding section 39-10-34 or any other provision of law, a city, by resolution, may permit permanent, on-duty or off-duty, full-time firefighters employed by the city or volunteers serving the city to solicit charitable contributions from motorists under the following conditions:

1. The solicitation is limited to one charitable organization annually which is qualified under section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)] and is registered under state law.
2. The solicitation is limited to three days in the calendar year.
3. The charitable organization provides the city proof of commercial general liability insurance against claims for bodily injury and property damage that may occur on the public streets, roads, or right of ways as a result of the actions of those soliciting.

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

Approved April 19, 2011  
Filed April 19, 2011

## CHAPTER 294

### HOUSE BILL NO. 1114

(Political Subdivisions Committee)  
(At the request of the Secretary of State)

AN ACT to create and enact section 40-21-16.1 of the North Dakota Century Code, relating to canvassing city elections; to amend and reenact sections 40-08-08, 40-08-16, and 40-09-10 of the North Dakota Century Code, relating to city elections; to repeal section 40-09-07 of the North Dakota Century Code, relating to the bond and oath of a city commissioner; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 40-08-08 of the North Dakota Century Code is amended and reenacted as follows:

##### **40-08-08. Vacancies on council - How filled.**

If a vacancy occurs in a city council office by death, resignation, or otherwise, the city council may call a special city election to fill the vacancy for the unexpired term, or may, after fifteen days of the date of the vacancy appoint a person from the ward in which the council member previously holding was elected or appointed to fill the vacancy until the next city election, at which election the unexpired term must be filled. Upon petition of five percent of the qualified electors of the ward, as determined by the total number of votes cast in that ward in the last city general election, the council shall call a special election to fill a vacancy occurring more than six months before the next city election, if the petition has been submitted within fifteen days and before four p.m. of the fifteenth day of the date of the vacancy or of the vacancy being filled by appointment. If the petition is mailed, it must be in the possession of the council or its representative before four p.m. on the fifteenth day after the vacancy occurs or after the vacancy was filled by appointment.

**SECTION 2. AMENDMENT.** Section 40-08-16 of the North Dakota Century Code is amended and reenacted as follows:

##### **40-08-16. Vacancy in office of mayor - Filled by election or by council - President of council to be acting mayor.**

If a vacancy occurs in the office of mayor, the city council may call a special city election to fill such vacancy for the unexpired term or may, after fifteen days from the date of such vacancy, elect one of its members to act as mayor. The member so elected shall possess all the rights and powers of the mayor until the next election and until a mayor is elected and qualified. Upon petition of five percent of the qualified electors, as determined by the total number of votes cast in the city in the last city general election, the council shall call a special election to fill a vacancy occurring more than six months prior to the next city election, provided such petition is submitted within fifteen days of the date of such vacancy. During the interim between the date when a vacancy occurs in the office of mayor and election and qualification of a successor, the president of the city council shall be the acting mayor.

**SECTION 3. AMENDMENT.** Section 40-09-10 of the North Dakota Century Code is amended and reenacted as follows:

**40-09-10. How Filling vacancies in board filled.**

If a vacancy occurs in the office of a city commissioner or president of the board of city commissioners, the board may call a special city election to fill such vacancy for the unexpired term, or may, after fifteen days from the date of such vacancy appoint a person to fill such vacancy until the next city election, at which election the unexpired term shall be filled. Upon petition of five percent of the qualified electors, as determined by the total number of votes cast in the city in the last city general election, the commission shall call a special city election to fill a vacancy occurring more than six months prior to the next city election, provided such petition has been submitted within fifteen days of the date of such vacancy.

**SECTION 4.** Section 40-21-16.1 of the North Dakota Century Code is created and enacted as follows:

**40-21-16.1. City canvassing board - Composition.**

For any city election not held in conjunction with a county election, the city canvassing board must be composed of the city auditor, city attorney, mayor or commission president, and two members of the city commission or council, or appointed replacements for any of these officials. An individual who served on an election board during the election may not serve as a representative on the canvassing board for that same election. The city canvassing board must be comprised of at least five members.

**SECTION 5. REPEAL.** Section 40-09-07 of the North Dakota Century Code is repealed.

**SECTION 6. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 4, 2011

Filed April 4, 2011



## CHAPTER 295

### HOUSE BILL NO. 1310

(Representatives Dahl, Kreun, Gruchalla)  
(Senators Lyson, Nething)

AN ACT to amend and reenact section 40-18-15.1 of the North Dakota Century Code, relating to transfers to district court.

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

**SECTION 1. AMENDMENT.** Section 40-18-15.1 of the North Dakota Century Code is amended and reenacted as follows:

#### **40-18-15.1. Transfer to district court - Expenses of prosecution - Division of funds and expenses between city, county, and state.**

A matter may be transferred to district court for trial only if within twenty-eight days after arraignment the defendant has requested in writing to transfer the case to district court and to exercise the defendant's right to a jury trial. After a transfer to district court, if the defendant waives a jury trial, the matter must be remanded to the municipal court unless the defendant and the prosecuting attorney agree that jurisdiction for the matter should remain with the district court. If the defendant does not waive a jury trial, the district court shall retain jurisdiction for sentencing. The city shall provide a prosecuting attorney and, in the case of any indigent defendant, a defense attorney. The city may contract with the county, state, or any individual or entity for prosecution or defense services. In the contract, the city, county, and state may agree to a division of all fees, fines, costs, forfeitures, and any other monetary consideration collected from cases transferred under this section, which must be paid to the city and county treasury and state general fund at least once each quarter. At the time of payment, the clerk of district court shall account under oath to the city auditor, county, and state treasurer for all money collected. In the contract the city, county, and state may also agree to a division of expenses, including jury and witness expenses, related to cases transferred under this section. In the absence of a contract all fees, fines, costs, forfeitures, and any other monetary consideration collected from transferred cases must be deposited in the state general fund.

Approved April 19, 2011  
Filed April 19, 2011

## CHAPTER 296

### SENATE BILL NO. 2356

(Senators Flakoll, Sorvaag)  
(Representatives Hawken, Keiser)

AN ACT to amend and reenact section 40-22.1-01 of the North Dakota Century Code, relating to special assessments for business promotion; and to provide for a legislative management study.

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

**SECTION 1. AMENDMENT.** Section 40-22.1-01 of the North Dakota Century Code is amended and reenacted as follows:

#### **40-22.1-01. Improvements by special assessments for business promotion.**

A municipality may defray the expense of improvements by special assessments for the promotion of business activity and new business development through any means not inconsistent with the purposes of this chapter, including advertising, public information, marketing, maintenance and decoration of public places, promotion of public events, furnishing of music in any public place, providing professional management, planning, and promotion, and the general promotion of trade activities. ~~For purposes of this chapter, "municipality" means a city with a population of ten thousand or less.~~ The governing body of the municipality may make and execute necessary or convenient agreements to exercise the powers and functions under this chapter, including contracts with any entity. In planning an improvement project under this chapter the governing body may include any work and materials which are deemed necessary or reasonably incidental to the project. A municipality may not issue warrants, bonds, or any other form of indebtedness in anticipation of the levy and collection of assessments under this chapter.

**SECTION 2. LEGISLATIVE MANAGEMENT STUDY - SPECIAL ASSESSMENTS.** During the 2011-12 interim, the legislative management shall study use of special assessments for public improvements, use and administration of special assessments across the state, and alternative funding mechanisms available and possible processes and procedures that would facilitate a transition to any recommended alternative funding mechanisms. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

Approved April 20, 2011  
Filed April 21, 2011

## CHAPTER 297

### HOUSE BILL NO. 1322

(Representatives Wrangham, S. Meyer, Damschen)  
(Senators Miller, Oehlke, Murphy)

AN ACT to amend and reenact sections 40-26-01 and 40-26-07 of the North Dakota Century Code, relating to limitation of imposition of special assessments against agricultural property; to provide for a legislative management study; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 40-26-01 of the North Dakota Century Code is amended and reenacted as follows:

**40-26-01. Courts to review levy and apportionment of special assessments - De novo review for agricultural property assessments.**

The courts shall review the levy and apportionment of the special assessments in all actions and proceedings involving the validity or apportionment of any special assessment for local or special improvements. If an action challenges the determination of benefits and special assessments imposed for agricultural property, the decision of the special assessment commission regarding agricultural property is not entitled to deference by the court and the court shall consider the determination of benefits and special assessments imposed for agricultural property de novo. An appeal taken under this section must be in accordance with the procedure provided in section 28-34-01.

**SECTION 2. AMENDMENT.** Section 40-26-07 of the North Dakota Century Code is amended and reenacted as follows:

**40-26-07. Actions to restrain collection of special assessments, avoid tax judgments - Duty of court.**

The court shall determine the true and just amount which any property attempted to be specially assessed for a special improvement should pay to make the same uniform with other special assessments for the same purpose, whenever any action or proceeding shall be commenced and maintained before the court to prevent or restrain the collection of any special assessment or part thereof made or levied by the officers of any municipality for any purpose authorized by law, if such assessment shall be held to be void by reason of noncompliance with any provision of the laws of this state. The~~Unless the action challenges the determination of benefits and special assessments imposed for agricultural property, the~~ amount of the assessment as the same appears on the assessment list shall be prima facie evidence of the true and just amount, and judgment must be rendered and given therefor against the party liable for such special assessment without regard to the proceedings had for the levy thereof. The judgment shall be a lien upon the property upon which a special assessment shall have been levied, of the same force and effect as the lien of a special assessment, and the lien of such special judgment shall be enforced by the court in such action. No action for said purposes shall be maintained unless it is commenced within six months after the special assessment is approved.

**SECTION 3. LEGISLATIVE MANAGEMENT STUDY - SPECIAL ASSESSMENTS AND AGRICULTURAL PROPERTY ASSESSMENTS.** During the 2011-12 interim, the legislative management shall consider studying use of special assessments for public improvements, use and administration of special assessments across the state, and alternative funding mechanisms available, with emphasis on imposition and relative rate of special assessments against agricultural property. The study must include examination of agricultural property tax classification and assessment issues, with emphasis on these issues within and near city boundaries. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

**SECTION 4. EFFECTIVE DATE.** This Act is effective for special assessments levied after July 31, 2011.

Approved April 19, 2011  
Filed April 19, 2011

## CHAPTER 298

### HOUSE BILL NO. 1076

(Representative DeKrey)

AN ACT to amend and reenact section 40-38-03 of the North Dakota Century Code, relating to compensation of members of public library boards; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 40-38-03 of the North Dakota Century Code is amended and reenacted as follows:

**40-38-03. Board of directors - Appointment - Term of office - ~~No compensation~~ Compensation - Filling vacancies - Organization.**

1. The governing body of a municipality ~~which that~~ has established a public library and reading room, or the board of county commissioners for a county library, shall appoint a board of five directors who must be residents of the municipality or county, as the case may be, to govern ~~such the~~ library and reading room. One member of the governing body of the municipality or designated representative ~~shall must~~ be a member of the board of directors of a municipal library, and must be a resident of the municipality ~~which that~~ establishes and maintains ~~such the~~ municipal library; and one member of the board of county commissioners or designated representative ~~shall must~~ be a member of the county board of directors.
2. The terms of office of the members of the first board of directors must be established so one member ~~shall hold~~ holds office for one year, two members ~~shall~~ hold office for two years, and two members ~~shall~~ hold office for three years. The members, at their first meeting, shall determine the length of their respective terms by lot. Thereafter, the number of directors required to fill expired terms ~~shall must~~ be appointed each year, and each ~~such~~ director ~~shall may~~ hold office for a term of three years from the first day of July in the year of appointment and until a successor has been appointed. No member of ~~such the~~ board ~~shall may~~ serve for more than two consecutive terms, after which an interval of one year must elapse before the same member may be reappointed. All vacancies on the board of directors ~~shall must~~ be reported by ~~such the~~ board to the governing body of the municipality or the board of county commissioners, as the case may be, and ~~shall must~~ be filled thereby. ~~However, a member of any municipal board of directors of a public library and reading room who was appointed to such position by a school board prior to July 1, 1975, may serve upon such board for the residue of the member's unexpired term unless such position shall otherwise become vacant. Appointments made~~ An appointment to fill an unexpired term ~~shall term may~~ be for the residue of the term only.
3. A director is entitled to payment for mileage and travel expenses as provided for in sections 44-08-04 and 54-06-09. No other compensation ~~shall may~~ be paid or allowed to a director unless the governing body of the municipality or

the board of county commissioners provides by ordinance or by resolution for the payment of compensation for members of the board of directors.

4. Immediately after the appointment of its members, the board of directors shall meet and organize by electing a president. The governing board of a municipality or county establishing public library service may, in lieu of appointing a library board, contract directly with a library board established by another governing body of a municipality or county for the purpose of extending public library service.

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

Approved March 28, 2011  
Filed March 28, 2011

## CHAPTER 299

### SENATE BILL NO. 2193

(Senators Nodland, Dotzenrod, Murphy)  
(Representatives Kasper, Schatz)

AN ACT to amend and reenact sections 40-51.2-05 and 40-51.2-07 of the North Dakota Century Code, relating to notice of proposed annexations.

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

**SECTION 1. AMENDMENT.** Section 40-51.2-05 of the North Dakota Century Code is amended and reenacted as follows:

##### **40-51.2-05. Notice - Petition of owners and electors - Mediation.**

1. The governing body may not take final action on a petition presented by owners and qualified electors until the petitioners have given notice of presentation of the petition by one publication in the official newspaper of the city as provided by section 40-01-09 and the governing body has mailed at least seven days before the presentation, by certified mail, a notice of the time and place of consideration of the petition to the owner of each parcel of real property within the area described in the petition at the person's last-known mailing address. The notice is not required to be sent to any owner of real property who signed a petition pursuant to section 40-51.2-03 or 40-51.2-04. ~~If the land area petitioned to be annexed to the city lies within the extraterritorial zoning or subdivision regulation authority of another city, the~~ At the same time, the governing body of the city must also shall mail, by certified mail, the notice of the time and place of consideration of the petition to the governing body of the other city each city, county, or township directly affected by the land area petitioned to be annexed.
2. If the land area petitioned to be annexed to the city lies within the extraterritorial zoning or subdivision regulation authority of another city and written consent to annex the land area is not received from the governing body of the other city, the annexing city may either stop its pursuit of the annexation or submit the matter to a committee for mediation as provided in section 40-51.2-07.1. If mediation does not resolve the matter, the office of administrative hearings may be petitioned to hear the matter in accordance with sections 40-51.2-08, 40-51.2-09, 40-51.2-11, 40-51.2-12, 40-51.2-13, 40-51.2-14, 40-51.2-15, 40-51.2-16, and 40-51.2-17.

**SECTION 2. AMENDMENT.** Section 40-51.2-07 of the North Dakota Century Code is amended and reenacted as follows:

##### **40-51.2-07. Annexation by resolution of city.**

1. The governing body of any city may adopt a resolution to annex contiguous or adjacent territory as follows:
  4. a. The governing body of the city shall adopt a resolution describing the property to be annexed.

2. b. The governing body of the city shall publish the resolution and a notice of the time and place the governing body will meet to hear and determine the sufficiency of any written protests against the proposed annexation in the official newspaper once each week for two consecutive weeks. The governing body of the city shall mail at least seven days before the meeting, by certified mail, a notice to the owner of each parcel of real property within the area to be annexed at the person's last-known mailing address. The notice must inform landowners of the resolution, the time and place of hearing, and the requirement that protests must be filed in writing. The owners of any real property within the territory proposed to be annexed within thirty days of the first publication of the resolution may file written protests with the city auditor protesting against the proposed annexation. The governing body of the city also shall mail at least seven days before the meeting, by certified mail, the notice of the time and place of the hearing to the governing body of each city, county, or township directly affected by the land area proposed to be annexed. No state-owned property may be annexed without the written consent of the state agency or department having control of the property. The governing body of the city, at its next meeting after the expiration of the time for filing the protests, shall hear and determine the sufficiency of the protests.
3. c. In the absence of protests filed by the owners of more than one-fourth of the territory proposed to be annexed as of the date of the adoption of the resolution, the territory described in the resolution becomes a part of the city. When a copy of the resolution and an accurate map of the annexed area, certified by the executive officer of the city, are filed and recorded with the county recorder, the annexation becomes effective. Annexation is effective for the purpose of general taxation on and after the first day of the next February. However, the city shall continue to classify as agricultural lands for tax purposes all lands in the annexed area which were classified as agricultural lands immediately before the annexation proceedings until those lands are put to another use.
2. If the owners of one-fourth or more of the territory proposed to be annexed protest, or if a city that has extraterritorial zoning or subdivision regulation authority over the area petitioned to be annexed protests, the city may either stop its pursuit of the annexation or submit the matter to a committee for mediation as provided in section 40-51.2-07.1.

Approved April 26, 2011  
Filed April 26, 2011



## CHAPTER 300

### SENATE BILL NO. 2050

(Legislative Management)  
(Taxation Committee)

AN ACT to create and enact a new subsection to section 40-58-20 and sections 40-58-20.2 and 40-58-20.3 of the North Dakota Century Code, relating to tax increment financing districts; and to amend and reenact subsection 2 of section 40-58-01.1 and subsection 1 of section 40-58-20 of the North Dakota Century Code, relating to tax increment financing by cities.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 40-58-01.1 of the North Dakota Century Code is amended and reenacted as follows:

2. "Blighted area" means an area other than a slum area which by reason of the presence of a substantial number of slums, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility, or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of these factors, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use. "Blighted area" does not include any land that has been assessed as agricultural property within the last ten years unless it was located within the interior boundaries of a city for at least ten years.

**SECTION 2. AMENDMENT.** Subsection 1 of section 40-58-20 of the North Dakota Century Code is amended and reenacted as follows:

1. At any time after the governing body of a municipality has approved a development or renewal plan for any development or renewal area and has filed that plan with the department of commerce division of community services, it may request the county auditor and treasurer to compute, certify, and remit tax increments resulting from the development or renewal of the area in accordance with the plan and any modifications thereof, and the county auditor and treasurer shall do so in accordance with this section.
  - a. For a tax increment district established before July 1, 2011, the base year for tax increments computed for a development or renewal area under this section or section 40-58-20.1 may not be used for more than twenty-five taxable years without the governing body of the municipality establishing a new base year using taxable values, established as of February first of the following year, which are not more than fifteen years old. Regardless of length of the initial district, the new base year may be used to compute tax increments for up to an additional fifteen years after which time the tax

increment district must be closed, except that the original base year for tax increments pledged for an indebtedness incurred before July 1, 2011, may continue until the indebtedness is paid.

- b. For a tax increment district established after July 1, 2011, the base year for tax increments computed for a development or renewal area under this section or section 40-58-20.1 may not be used for more than twenty-five taxable years without the governing body of the municipality establishing a new base year using taxable values, established as of February first of the following year, which are not more than fifteen years old. The new base year may be used to compute tax increments for up to an additional five years after which time the tax increment district must be closed.

**SECTION 3.** A new subsection to section 40-58-20 of the North Dakota Century Code is created and enacted as follows:

The governing body of a municipality with an active tax increment financing district may at any time identify funds on hand that are in excess of the costs it determines necessary to complete the activities included in the last approved urban renewal plan for that district. The governing body shall cause the identified surplus to be transferred to the county treasurer to be distributed to the state and all political subdivisions having power to tax property in the area, in amounts proportionate to the most recent five-year average of the property tax levy within the district.

**SECTION 4.** Section 40-58-20.2 of the North Dakota Century Code is created and enacted as follows:

**40-58-20.2. Tax increment financing proposal - Public hearing - Invitation to representatives of affected taxing districts.**

Before approval of a development or renewal plan for any development or renewal area under section 40-58-20, the governing body of the municipality shall conduct a public hearing on the proposal. The governing body shall provide invitations to participate in the public hearing to the governing body of each county, school district, and park district within the development or renewal area. At a minimum, the governing body of the municipality shall provide the following information at the public hearing:

1. The anticipated costs of development of property to be reimbursed by tax incentives.
2. The anticipated annual revenue from tax increments which will be received to complete the development or renewal plan.
3. The anticipated date when the plan will be completed, the costs will be fully paid, and the tax increments will be released.
4. The estimate of the dollars annually attributable to the levies from each taxing entity which will be credited to the tax increment fund.

**SECTION 5.** Section 40-58-20.3 of the North Dakota Century Code is created and enacted as follows:

**40-58-20.3. Tax increment financing reports.**

For each development or renewal plan for any development or renewal area under section 40-58-20 in existence at the end of a calendar year, the governing body of the municipality shall file an annual report with the department of commerce, by the following July thirty-first, which is in a format prescribed by the department. The report must include:

1. The total of outstanding indebtedness.
2. The balance of funds on hand.
3. The name of the tax increment financing district.

Approved April 26, 2011  
Filed April 26, 2011

## CHAPTER 301

### SENATE BILL NO. 2048

(Legislative Management)  
(Taxation Committee)

AN ACT to create and enact a new subsection to section 40-63-03 of the North Dakota Century Code, relating to informational reporting by cities and the department of commerce on the status of property included in both a tax increment financing district and a renaissance zone.

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

**SECTION 1.** A new subsection to section 40-63-03 of the North Dakota Century Code is created and enacted as follows:

If within a renaissance zone there is property that is included in a tax increment financing district, the city in which the property is located shall provide the department of commerce an annual report regarding any such property at the time requested by the department of commerce. The report required under this subsection must identify the property, provide the expected duration of inclusion of the property in the tax increment financing district and the renaissance zone, and identify any property and income tax benefits of the property and the expected duration of those benefits. The department of commerce shall deliver an annual report compiling the information required under this subsection to the legislative management interim committee on taxation issues or upon request of any other interim committee of the legislative management.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 302

### HOUSE BILL NO. 1102

(Finance and Taxation Committee)  
(At the request of the Tax Commissioner)

AN ACT to amend and reenact subsection 3 of section 40-63-04 of the North Dakota Century Code, relating to the procedure for electing to take the renaissance zone individual income tax credit; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Subsection 3 of section 40-63-04 of the North Dakota Century Code is amended and reenacted as follows:

3. If the cost of a new business purchase, leasehold improvement, or expansion of an existing business, approved as a zone project, exceeds seventy-five thousand dollars, and the business is located in a city with a population of not more than two thousand five hundred, an individual taxpayer may, in lieu of the exemption provided in subsection 2, elect to take an income tax exemption of up to two thousand dollars of ~~personal~~individual income tax liability as determined under section 57-38-30.3. The election must be made on the taxpayer's ~~zone project application~~return as originally and timely filed. The election is irrevocable and binding for the duration of the exemptions provided in subsection 2 or this subsection. If ~~an~~ election is not made on the ~~zone project application~~original return, the taxpayer is only eligible for the exemption provided in subsection 2.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for zone projects approved after December 31, 2010.

Approved March 28, 2011  
Filed March 28, 2011

## CHAPTER 303

### SENATE BILL NO. 2218

(Senators Sorvaag, Krebsbach, Triplett)  
(Representatives Kempenich, Kreun, Thoreson)

AN ACT to create and enact a new subsection to section 40-63-07 of the North Dakota Century Code, relating to restrictions on renaissance fund organization investments in enterprises owned by renaissance fund organization officers or employees; to amend and reenact subsections 2 and 5 of section 40-63-07 of the North Dakota Century Code, relating to renaissance fund organization income tax credits; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 40-63-07 of the North Dakota Century Code is amended and reenacted as follows:

2. The purpose of a renaissance fund organization is solely to raise funds to be used to ~~make investments in finance zone projects and to make investments in other projects located in designated renaissance zone cities/zones.~~ A renaissance fund organization may provide financing to projects undertaken by individuals, partnerships, limited partnerships, limited liability companies, trusts, corporations, nonprofit organizations, and public entities. The financing may include any combination of equity investments, loans, guarantees, and commitments for financing. The amount of financing is not limited by this chapter.

**SECTION 2. AMENDMENT.** Subsection 5 of section 40-63-07 of the North Dakota Century Code is amended and reenacted as follows:

5. The total amount of credits allowed under this section may not exceed, in the aggregate, ~~seven~~eight million five hundred thousand dollars for investments in renaissance fund organizations. A renaissance fund organization that has received investments that qualify for ~~these additional~~the credits under this subsection ~~may not~~shall use ~~more than fifty percent of such~~those investments ~~for organization investments outside of~~to finance projects within a renaissance zone.

**SECTION 3.** A new subsection to section 40-63-07 of the North Dakota Century Code is created and enacted as follows:

Renaissance fund organization officers and employees may be actively involved in the enterprises in which the renaissance fund organization invests but the renaissance fund organization may not invest in any enterprise if any one renaissance fund organization officer or employee owns more than forty-nine percent of the ownership interest in the enterprise. A renaissance fund organization may not invest in an enterprise if renaissance fund organization officers and employees collectively own more than forty-nine percent of the ownership interests, either through direct ownership or through ownership of interest in a passthrough entity.

**SECTION 4. EFFECTIVE DATE.** The changes in sections 1 and 2 of this Act requiring a renaissance fund organization to limit its financing to projects located in a renaissance zone are effective for new financing initiated after December 31, 2011. Section 3 of this Act is effective for investments made in or by a renaissance fund organization after December 31, 2011.

Approved April 26, 2011  
Filed April 26, 2011

# UNIFORM COMMERCIAL CODE

## CHAPTER 304

### HOUSE BILL NO. 1137

(Judiciary Committee)

(At the request of the Commission on Uniform State Laws)

AN ACT to create and enact sections 41-09-132, 41-09-133, 41-09-134, 41-09-135, 41-09-136, 41-09-137, 41-09-138, and 41-09-139 of the North Dakota Century Code, relating to transition provision for revision of secured transaction laws; to amend and reenact sections 41-09-02 and 41-09-05, subdivision b of subsection 6 of section 41-09-27, subsection 1 of section 41-09-31, sections 41-09-36, 41-09-37, and 41-09-46, subsection 5 of section 41-09-68, subsection 2 of section 41-09-70, subdivision c of subsection 3 of section 41-09-73, section 41-09-74, subsection 3 of section 41-09-78, subsection 6 of section 41-09-86, subsection 2 of section 41-09-87, section 41-09-89, and paragraph 1 of subdivision b of subsection 2 of section 41-09-104 of the North Dakota Century Code, relating to a revision to Uniform Commercial Code Article 9 relating to secured transactions; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 41-09-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **41-09-02. (9-102) Definitions and index of definitions.**

1. In this chapter:

a. "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

b. "Account", except as used in "account for", means:

(1) A right to payment of a monetary obligation, regardless of whether earned by performance:

(a) For property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of;

(b) For services rendered or to be rendered;

(c) For a policy of insurance issued or to be issued;

(d) For a secondary obligation incurred or to be incurred;

(e) For energy provided or to be provided;



- (f) For the use or hire of a vessel under a charter or other contract;
  - (g) Arising out of the use of a credit or charge card or information contained on or for use with the card; or
  - (h) As winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state.
- (2) The term includes a health care insurance receivable. The term does not include:
- (a) Right to payment evidenced by chattel paper or an instrument;
  - (b) Commercial tort claim;
  - (c) Deposit account;
  - (d) Investment property;
  - (e) Letter-of-credit right or letters of credit;
  - (f) Right to payment for any money or fund advanced or sold, other than a right arising out of the use of a credit or charge card or information contained on or for use with the card; or
  - (g) Certificate of deposit.
- c. "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include a person obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.
- d. "Accounting", except as used in "accounting for", means a record:
- (1) Authenticated by a secured party;
  - (2) Indicating the aggregate unpaid secured obligations as of a date not more than thirty-five days earlier or thirty-five days later than the date of the record; and
  - (3) Identifying the components of the obligations in reasonable detail.
- e. "Agricultural lien" means an interest in farm products:
- (1) That secures payment or performance of an obligation for:
    - (a) Goods or services furnished in connection with a debtor's farming operation or in connection with processing, production, or entrustment of the farm products; or
    - (b) Rent on real property leased by a debtor in connection with the debtor's farming operation;
  - (2) That is created by statute in favor of a person that:

- (a) Furnished goods or services in connection with processing, production, or entrustment of the farm product or in the ordinary course of that person's business furnished goods or services to a debtor in connection with a debtor's farming operation; or
  - (b) Leased real property to a debtor in connection with the debtor's farming operation; and
- (3) Of which the effectiveness does not depend on the person's possession of the personal property.
- f. "As-extracted collateral" means:
  - (1) Oil, gas, or other mineral that is subject to a security interest that:
    - (a) Is created by a debtor having an interest in the mineral before extraction; and
    - (b) Attaches to the mineral as extracted; or
  - (2) Accounts arising out of the sale at the wellhead or minehead of oil, gas, or other mineral in which the debtor had an interest before extraction.
- g. "Authenticate" means:
  - (1) To sign; or
  - (2) To execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record. With present intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol, or process.
- h. "Bank" means an organization engaged in the business of banking. The term includes a savings bank, savings and loan association, credit union, and trust company.
- i. "Cash proceeds" means proceeds that are money, checks, deposit accounts, certificates of deposit, or the like.
- j. "Certificate of deposit" means a bank record of a sum of money which has been received by the bank and a promise made by the bank to repay the sum of money. The term does not include a deposit account. A certificate of deposit may be negotiable, nonnegotiable, nontransferable, certificated, or uncertificated.
- k. "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. The term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the security interest in question to be indicated on the record as a

condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

- I. "Certificated certificate of deposit" means a certificate of deposit that is represented by a certificate.
- m. "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this subdivision, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include charters or other contracts involving the use or hire of a vessel or records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.
- n. "Collateral" means the property subject to a security interest or agricultural lien. The term includes:
  - (1) Proceeds to which a security interest attaches;
  - (2) Accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and
  - (3) Goods that are the subject of a consignment.
- o. "Commercial tort claim" means a claim arising in tort with respect to which:
  - (1) The claimant is an organization; or
  - (2) The claimant is an individual and the claim:
    - (a) Arose in the course of the claimant's business or profession; and
    - (b) Does not include damages arising out of personal injury to or the death of an individual.
- p. "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.
- q. "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:
  - (1) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

- (2) Traded on a foreign commodity board of trade, exchange, or market and is carried on the books of a commodity intermediary for a commodity customer.
- r. "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on the intermediary's books.
- s. "Commodity intermediary" means a person that:
  - (1) Is registered as a futures commission merchant under federal commodities law; or
  - (2) In the ordinary course of the person's business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.
- t. "Communicate" means:
  - (1) To send a written or other tangible record;
  - (2) To transmit a record by any means agreed upon by the persons sending and receiving the record; or
  - (3) In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.
- u. "Consignee" means a merchant to which goods are delivered in a consignment.
- v. "Consignment" means a transaction, regardless of form, in which a person delivers goods to a merchant for the purpose of sale and:
  - (1) The merchant:
    - (a) Deals in goods of that kind under a name other than the name of the person making delivery;
    - (b) Is not an auctioneer; and
    - (c) Is not generally known by its creditors to be substantially engaged in selling the goods of others;
  - (2) With respect to each delivery, the aggregate value of the goods is one thousand dollars or more at the time of delivery;
  - (3) The goods are not consumer goods immediately before delivery; and
  - (4) The transaction does not create a security interest that secures an obligation.
- w. "Consignor" means a person that delivers goods to a consignee in a consignment.
- x. "Consumer debtor" means a debtor in a consumer transaction.

- y. "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.
- z. "Consumer-goods transaction" means a consumer transaction in which:
  - (1) An individual incurs an obligation primarily for personal, family, or household purposes; and
  - (2) A security interest in consumer goods secures the obligation.
- aa. "Consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.
- bb. "Consumer transaction" means a transaction in which:
  - (1) An individual incurs an obligation primarily for personal, family, or household purposes;
  - (2) A security interest secures the obligation; and
  - (3) The collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.
- cc. "Continuation statement" means an amendment of a financing statement which:
  - (1) Identifies, by its file number, the initial financing statement to which it relates; and
  - (2) Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.
- dd. "Debtor" means:
  - (1) A person having an interest, other than a security interest or other lien, in the collateral, regardless of whether the person is an obligor;
  - (2) A seller of accounts, chattel paper, payment intangibles, or promissory notes; or
  - (3) A consignee.
- ee. "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or an account evidenced by a certificate of deposit or an instrument.
- ff. "Document" means a document of title or a receipt of the type described in subsection 2 of section 41-07-07.
- gg. "Electronic chattel paper" means chattel paper evidenced by a record consisting of information stored in an electronic medium.
- hh. "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

- ii. "Equipment" means goods other than inventory, farm products, or consumer goods.
- jj. "Farm products" means goods, other than standing timber, subject to a lien created under chapter 35-17, 35-30, or 35-31, or with respect to which the debtor is engaged in a farming operation and which are:
  - (1) Crops grown, growing, or to be grown, including:
    - (a) Crops produced on trees, vines, and bushes; and
    - (b) Aquatic goods produced in aquacultural operations;
  - (2) Livestock, born or unborn, including aquatic goods produced in aquacultural operations;
  - (3) Supplies used or produced in a farming operation; or
  - (4) Products of crops or livestock in their unmanufactured states.
- kk. "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.
- ll. "File number" means the number assigned to an initial financing statement pursuant to subsection 1 of section 41-09-90.
- mm. "Filing office" means an office designated in section 41-09-72 as the place to file a financing statement.
- nn. "Filing-office rule" means a rule adopted under section 41-09-97.
- oo. "Financing statement" means a record composed of an initial financing statement and any filed record relating to the initial financing statement.
- pp. "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying subsections 1 and 2 of section 41-09-73. The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.
- qq. "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.
- rr. "General intangible" means any personal property, including things in action, other than accounts, certificates of deposit, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.
- ss. Reserved.
- tt. "Goods" means all things that are movable when a security interest attaches.
  - (1) The term includes:

- (a) Fixtures;
  - (b) Standing timber that is to be cut and removed under a conveyance or contract for sale;
  - (c) The unborn young of animals;
  - (d) Crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes; and
  - (e) Manufactured homes.
- (2) The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if:
- (a) The program is associated with the goods in such a manner that the program is customarily considered part of the goods; or
  - (b) By becoming the owner of the goods, a person acquires a right to use the program in connection with the goods.
- (3) The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, certificates of deposit, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.
- uu. "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.
- vv. "Health care insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health care goods or services provided or to be provided.
- ww. "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include:
- (1) Certificates of deposit;
  - (2) Investment property;
  - (3) Letters of credit; or
  - (4) Writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

- xx. "Inventory" means goods, other than farm products, that:
- (1) Are leased by a person as lessor;
  - (2) Are held by a person for sale or lease or to be furnished under a contract of service;
  - (3) Are furnished by a person under a contract of service; or
  - (4) Consist of raw materials, work in process, or materials used or consumed in a business.
- yy. "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.
- zz. "Jurisdiction of organization", with respect to a registered organization, means the jurisdiction under whose law the organization is organized.
- aaa. "Letter-of-credit right" means a right to payment or performance under a letter of credit, regardless of whether the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.
- bbb. "Lien creditor" means:
- (1) A creditor that has acquired a lien on the property involved by attachment, levy, or the like;
  - (2) An assignee for benefit of creditors from the time of assignment;
  - (3) A trustee in bankruptcy from the date of the filing of the petition; or
  - (4) A receiver in equity from the time of appointment.
- ccc. "Manufactured home" means a structure, transportable in one or more sections, that, in the traveling mode, is eight body feet [2.44 meters] or more in width or forty body feet [12.19 meters] or more in length, or, when erected on site, is three hundred twenty square feet [29.73 square meters] or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this subdivision except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States secretary of housing and urban development and complies with the standards established under title 42 of the United States Code.
- ddd. "Manufactured-home transaction" means a secured transaction:
- (1) Which creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or



- (2) In which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.
- eee. "Mortgage" means a consensual interest in real property, including fixtures, that secures payment or performance of an obligation.
- fff. "New debtor" means a person that becomes bound as debtor under subsection 4 of section 41-09-13 by a security agreement previously entered into by another person.
- ggg. "New value" means:
- (1) Money;
  - (2) Money's worth in property, services, or new credit; or
  - (3) Release by a transferee of an interest in property previously transferred to the transferee.

The term does not include an obligation substituted for another obligation.

- hhh. "Noncash proceeds" means proceeds other than cash proceeds.
- iii. "Nonnegotiable certificate of deposit" means a bank record that contains an acknowledgment that a sum of money has been received by the issuer and a promise by the issuer to repay the sum of money other than a deposit account or negotiable instrument.
- jjj. "Nontransferable certificate of deposit" means a nonnegotiable certificate of deposit which may be transferred only on the books of the issuer, with the consent of the issuer, or subject to other restrictions or considerations of the issuer on transfer. The term does not include a deposit account.
- kkk. "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral:
- (1) Owes payment or other performance of the obligation;
  - (2) Has provided property other than the collateral to secure payment or other performance of the obligation; or
  - (3) Is otherwise accountable in whole or in part for payment or other performance of the obligation.

The term does not include issuers or nominated persons under a letter of credit.

- lll. "Original debtor", except as used in subsection 3 of section 41-09-30, means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under subsection 4 of section 41-09-13.
- mmm. "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.
- nnn. "Person related to", with respect to an individual, means:

- (1) The spouse of the individual;
  - (2) A brother, brother-in-law, sister, or sister-in-law of the individual;
  - (3) An ancestor or lineal descendant of the individual or the individual's spouse; or
  - (4) Any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.
- ooo. "Person related to", with respect to an organization, means:
- (1) A person directly or indirectly controlling, controlled by, or under common control with the organization;
  - (2) An officer or director of, or a person performing similar functions with respect to, the organization;
  - (3) An officer or director of, or a person performing similar functions with respect to, a person described in paragraph 1;
  - (4) The spouse of an individual described in paragraph 1, 2, or 3; or
  - (5) An individual who is related by blood or marriage to an individual described in paragraph 1, 2, 3, or 4 and shares the same home with the individual.
- ppp. "Proceeds", except as used in subsection 2 of section 41-09-106, means the following property:
- (1) Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;
  - (2) Whatever is collected on, or distributed on account of, collateral;
  - (3) Rights arising out of collateral;
  - (4) To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or
  - (5) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.
- qqq. "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.
- rrr. "Proposal" means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures under sections 41-09-115 through 41-09-117.

sss. "Public organic record" means a record that is available to the public for inspection and which is:

(1) A record consisting of the record initially filed with or issued by a state or the United States to form or organize an organization and any record filed with or issued by the state or the United States which amends or restates the initial record;

(2) An organic record of a business trust consisting of the record initially filed with a state and any record filed with the state which amends or restates the initial record, if a statute of the state governing business trusts requires that the record be filed with the state; or

(3) A record consisting of legislation enacted by the legislature of a state or the congress of the United States which forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the state or United States which amends or restates the name of the organization.

ttt. "Pursuant to commitment", with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, regardless of whether a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from the secured party's obligation.

ttt-uuu. "Record", except as used in "for record", "of record", "record or legal title", and "record owner", means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

uuu-vvv. "Registered organization" means an organization formed or organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the state or United States. The term includes a business trust that is formed or organized under the law of a single state if a statute of the state governing business trusts requires that the business trust's organic record be filed with the state.

vvv-www. "Secondary obligor" means an obligor to the extent that:

(1) The obligor's obligation is secondary; or

(2) The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

www-xxx. "Secured party" means:

(1) A person in whose favor a security interest is created or provided for under a security agreement, regardless of whether any obligation to be secured is outstanding;

(2) A person that holds an agricultural lien;

- (3) A consignor;
- (4) A person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;
- (5) A trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or
- (6) A person that holds a security interest arising under section 41-02-46, section 41-02-53, subsection 3 of section 41-02-90, subsection 5 of section 41-02.1-56, section 41-04-22, or section 41-05-18.

~~xxx-yyv~~. "Security agreement" means an agreement that creates or provides for a security interest.

~~yyy-zzz~~. "Send", in connection with a record or notification, means:

- (1) To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or
- (2) To cause the record or notification to be received within the time that it would have been received if properly sent under paragraph 1.

~~zzz-aaaa~~. "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

~~aaa-bbbb~~. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

~~bbb-cccc~~. "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

~~eee-dddd~~. "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

~~ddd-eee~~. "Termination statement" means an amendment of a financing statement which:

- (1) Identifies, by the amendment's file number, the initial financing statement to which it relates; and
- (2) Indicates either that the amendment is a termination statement or that the identified financing statement is no longer effective.

~~eee-ffff~~. "Transmitting utility" means a person primarily engaged in the business of:

- (1) Operating a railroad, subway, street railway, or trolley bus;
- (2) Transmitting communications electrically, electromagnetically, or by light;
- (3) Transmitting goods by pipeline or sewer; or
- (4) Transmitting or producing and transmitting electricity, steam, gas, or water.

fff-gggg. "Uncertificated certificate of deposit" means an obligation of a bank to repay a sum of money that it has received which is not represented by a certificate, but only by an entry on the books of the bank and any documentation given to the customer by the bank. The term does not include a deposit account.

2. "Control" as provided under section 41-07-06 and the following definitions in other chapters apply to this chapter:
  - a. "Applicant". Section 41-05-02.
  - b. "Beneficiary". Section 41-05-02.
  - c. "Broker". Section 41-08-02.
  - d. "Certificated security". Section 41-08-02.
  - e. "Check". Section 41-03-04.
  - f. "Clearing corporation". Section 41-08-02.
  - g. "Contract for sale". Section 41-02-06.
  - h. "Customer". Section 41-04-04.
  - i. "Entitlement holder". Section 41-08-02.
  - j. "Financial asset". Section 41-08-02.
  - k. "Holder in due course". Section 41-03-28.
  - l. "Issuer" (with respect to a letter of credit or letter-of-credit right). Section 41-05-02.
  - m. "Issuer" (with respect to a security). Section 41-08-17.
  - n. "Issuer" (with respect to documents of title). Section 41-07-02.
  - o. "Lease". Section 41-02.1-03.
  - p. "Lease agreement". Section 41-02.1-03.
  - q. "Lease contract". Section 41-02.1-03.
  - r. "Leasehold interest". Section 41-02.1-03.

- s. "Lessee". Section 41-02.1-03.
  - t. "Lessee in ordinary course of business". Section 41-02.1-03.
  - u. "Lessor". Section 41-02.1-03.
  - v. "Lessor's residual interest". Section 41-02.1-03.
  - w. "Letter of credit". Section 41-05-02.
  - x. "Merchant". Section 41-02-04.
  - y. "Negotiable instrument". Section 41-03-04.
  - z. "Nominated person". Section 41-05-02.
  - aa. "Note". Section 41-03-04.
  - bb. "Proceeds of a letter of credit". Section 41-05-14.
  - cc. "Prove". Section 41-03-03.
  - dd. "Sale". Section 41-02-06.
  - ee. "Securities account". Section 41-08-41.
  - ff. "Securities intermediary". Section 41-08-02.
  - gg. "Security". Section 41-08-02.
  - hh. "Security certificate". Section 41-08-02.
  - ii. "Security entitlement". Section 41-08-02.
  - jj. "Uncertificated security". Section 41-08-02.
3. Chapter 41-01 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

**SECTION 2. AMENDMENT.** Section 41-09-05 of the North Dakota Century Code is amended and reenacted as follows:

**41-09-05. (9-105) Control of electronic chattel paper.**

1. A secured party has control of electronic chattel paper if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned.
2. A system satisfies subsection 1, and a secured party has control of electronic chattel paper, if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:
  4. a. A single authoritative copy of the record or records exists which is unique, identifiable, and, except as otherwise provided in ~~subsections 4 through 6~~ subdivisions d, e, and f, unalterable;

- 2- b. The authoritative copy identifies the secured party as the assignee of the record or records;
- 3- c. The authoritative copy is communicated to and maintained by the secured party or the secured party's designated custodian;
- 4- d. Copies or ~~revisions~~amendments that add or change an identified assignee of the authoritative copy can be made only with the ~~participation~~consent of the secured party;
- 5- e. Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and
- 6- f. Any ~~revision~~amendment of the authoritative copy is readily identifiable as an authorized or unauthorized revision.

**SECTION 3. AMENDMENT.** Subdivision b of subsection 6 of section 41-09-27 of the North Dakota Century Code is amended and reenacted as follows:

- b. In the state that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of location, including by designation its main office, home office, or other comparable office; or

**SECTION 4. AMENDMENT.** Subsection 1 of section 41-09-31 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided in subsection 4, the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:
  - a. A statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt subsection 1 of section 41-09-30;
  - b. Section 35-01-05.1; or
  - c. A ~~certificate of title~~ statute of another jurisdiction which provides for a security interest to be indicated on ~~the~~ a certificate of title as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

**SECTION 5. AMENDMENT.** Section 41-09-36 of the North Dakota Century Code is amended and reenacted as follows:

**41-09-36. (9-316) ~~Continued perfection of security interest following~~Effect of change in governing law.**

1. A security interest perfected pursuant to the law of the jurisdiction designated in subsection 1 of section 41-09-21 or subsection 3 of section 41-09-25 remains perfected until the earliest of:
  - a. The time perfection would have ceased under the law of that jurisdiction;
  - b. The expiration of four months after a change of the debtor's location to another jurisdiction; or

- c. The expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.
2. If a security interest described in subsection 1 becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.
3. A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:
  - a. The collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;
  - b. Thereafter the collateral is brought into another jurisdiction; and
  - c. Upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.
4. Except as otherwise provided in subsection 5, a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this state remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.
5. A security interest described in subsection 4 becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under subsection 2 of section 41-09-31 or section 41-09-33 are not satisfied before the earlier of:
  - a. The time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this state; or
  - b. The expiration of four months after the goods had become so covered.
6. A security interest in deposit accounts, certificates of deposit, letter-of-credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:
  - a. The time the security interest would have become unperfected under the law of that jurisdiction; or
  - b. The expiration of four months after a change of the applicable jurisdiction to another jurisdiction.
7. If a security interest described in subsection 6 becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the



period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

8. The following rules apply to collateral to which a security interest attaches within four months after the debtor changes its location to another jurisdiction:
  - a. A financing statement filed before the change pursuant to the law of the jurisdiction designated in subsection 1 of section 41-09-21 or subsection 3 of section 41-09-25 is effective to perfect a security interest in the collateral if the financing statement would have been effective to perfect a security interest in the collateral if the debtor had not changed its location.
  - b. If a security interest that is perfected by a financing statement that is effective under subdivision a becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in subsection 1 of section 41-09-21 or subsection 3 of section 41-09-25 or the expiration of the four-month period, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.
9. If a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction designated in subsection 1 of section 41-09-21 or subsection 3 of section 41-09-25 and the new debtor is located in another jurisdiction, the following rules apply:
  - a. The financing statement is effective to perfect a security interest in collateral in which the new debtor has or acquires rights before or within four months after the new debtor becomes bound under subsection 4 of section 41-09-13, if the financing statement would have been effective to perfect a security interest in the collateral if the collateral had been acquired by the original debtor.
  - b. A security interest that is perfected by the financing statement and which becomes perfected under the law of the other jurisdiction before the earlier of the expiration of the four-month period or the time the financing statement would have become ineffective under the law of the jurisdiction designated in subsection 1 of section 41-09-21 or subsection 3 of section 41-09-25 remains perfected thereafter. A security interest that is perfected by the financing statement but which does not become perfected under the law of the other jurisdiction before the earlier time or event becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

**SECTION 6. AMENDMENT.** Section 41-09-37 of the North Dakota Century Code is amended and reenacted as follows:

**41-09-37. (9-317) Interests that take priority over or take free of security interest or agricultural lien.**

1. A security interest or an agricultural lien is subordinate to the rights of:

- a. A person entitled to priority under section 41-09-42; and
- b. Except as otherwise provided in subsection 5, a person that becomes a lien creditor before the earlier of the time:
  - (1) The security interest or agricultural lien is perfected; or
  - (2) One of the conditions specified in subdivision c of subsection 2 of section 41-09-13 is met and a financing statement covering the collateral is filed.
2. Except as otherwise provided in subsection 5, a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments, or a certificated security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.
3. Except as otherwise provided in subsection 5, a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.
4. A licensee of a general intangible or a buyer, other than a secured party, of ~~accounts, electronic chattel paper, electronic documents, general intangibles, or investment property collateral~~ other than tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.
5. Except as otherwise provided in sections 41-09-40 and 41-09-41, if a person files a financing statement with respect to a purchase-money security interest before or within twenty days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

**SECTION 7. AMENDMENT.** Section 41-09-46 of the North Dakota Century Code is amended and reenacted as follows:

**41-09-46. (9-326) Priority of security interests created by new debtor.**

1. Subject to subsection 2, a security interest that is created by a new debtor ~~which is in collateral in which the new debtor has or acquired rights and perfected by a filed financing statement that is effective solely under section 41-09-79 in collateral in which a new debtor has or acquires rights~~ would be ineffective to perfect the security interest but for the application of section 41-09-79 or of section 41-09-79 and subdivision a of subsection 9 of section 41-09-36 is subordinate to a security interest in the same collateral which is perfected other than by such a filed financing statement ~~that is effective solely under section 41-09-79.~~
2. The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements ~~that are effective solely under section 41-09-79~~ described in subsection 1. However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting

security interests rank according to priority in time of the new debtor's having become bound.

**SECTION 8. AMENDMENT.** Subsection 5 of section 41-09-68 of the North Dakota Century Code is amended and reenacted as follows:

5. Subsection 4 does not apply to the sale of a payment intangible or promissory note, other than a sale pursuant to a disposition under section 41-09-107 or an acceptance of collateral under section 41-09-115.

**SECTION 9. AMENDMENT.** Subsection 2 of section 41-09-70 of the North Dakota Century Code is amended and reenacted as follows:

2. Subsection 1 applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note, other than a sale pursuant to a disposition under section 41-09-107 or an acceptance of collateral under section 41-09-115.

<sup>116</sup> **SECTION 10. AMENDMENT.** Subdivision c of subsection 3 of section 41-09-73 of the North Dakota Century Code is amended and reenacted as follows:

- c. The record satisfies the requirements for a financing statement in this section ~~other than an indication, but:~~
  - (1) The record need not indicate that it is to be filed in the real property records; and
  - (2) The record sufficiently provides the name of a debtor who is an individual if the record provides the individual name of the debtor or the surname and first personal name of the debtor, even if the debtor is an individual to whom subdivision d of subsection 1 of section 41-09-74 applies; and

**SECTION 11. AMENDMENT.** Section 41-09-74 of the North Dakota Century Code is amended and reenacted as follows:

**41-09-74. (9-503) Name of debtor and secured party.**

1. A financing statement sufficiently provides the name of the debtor:
  - a. ~~If~~ Except as otherwise provided in subdivision c, if the debtor is a registered organization, or the collateral is held in a trust that is a registered organization, only if the financing statement provides the name ~~of the debtor indicated that is stated to be the registered organization's name on the public organic record of most recently filed with or issued or enacted by the debtor's registered organization's jurisdiction of organization which shows the debtor to have been organized~~ purports to state, amend, or restate the registered organization's name;
  - b. ~~If~~ Subject to subsection 6, if the debtor is a decedent's estate collateral is being administered by the personal representative of a decedent, only if the financing statement provides, as the name of the debtor, the name of

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<sup>116</sup> Section 41-09-73 was also amended by section 3 of Senate Bill No. 2249, chapter 456.

- the decedent and, in a separate part of the financing statement, indicates that the debtor is an estate collateral is being administered by a personal representative;
- c. If the debtor is a trust or a trustee acting with respect to property held in trust, only if the financing statement:
- (1) Provides the name specified for the trust in its organic documents or, if no name is specified, provides the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors; and
  - (2) Indicates, in the debtor's name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust; collateral is held in a trust that is not a registered organization, only if the financing statement:
    - (1) Provides, as the name of the debtor:
      - (a) If the organic record of the trust specifies a name for the trust, the name so specified; or
      - (b) If the organic record of the trust does not specify a name for the trust, the name of the settlor or testator; and
    - (2) In a separate part of the financing statement:
      - (a) If the name is provided in accordance with subparagraph a of paragraph 1, indicates that the collateral is held in a trust; or
      - (b) If the name is provided in accordance with subparagraph b of paragraph 1, provides additional information sufficient to distinguish the trust from other trusts having one or more of the same settlors or the same testator and indicates that the collateral is held in a trust, unless the additional information so indicates;
- d. Subject to subsection 7, if the debtor is an individual to whom this state has issued a driver's license or identity card that has not expired, only if the financing statement provides the name of the individual which is indicated on the driver's license or identity card;
- e. If the debtor is an individual to whom subdivision d does not apply, only if the financing statement provides the individual name of the debtor or the surname and first personal name of the debtor; and
- d.f. In other cases:
- (1) If the debtor has a name, only if ~~the~~ the financing statement provides the individual or organizational name of the debtor; and
  - (2) If the debtor does not have a name, only if ~~the~~ the financing statement provides the names of the partners, members, associates, or other persons comprising the debtor, in a manner that each name provided would be sufficient if the person named were the debtor.

2. A financing statement that provides the name of the debtor in accordance with subsection 1 is not rendered ineffective by the absence of:
  - a. A trade name or other name of the debtor; or
  - b. Unless required under paragraph 2 of subdivision d of subsection 1, names of partners, members, associates, or other persons comprising the debtor.
3. A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.
4. Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.
5. A financing statement may provide the name of more than one debtor and the name of more than one secured party.
6. The name of the decedent indicated on the order appointing the personal representative of the decedent issued by the court having jurisdiction over the collateral is sufficient as the "name of the decedent" under subdivision b of subsection 1.
7. If this state has issued to an individual more than one driver's license or identity card of a kind described in subdivision d of subsection 1, the one that was issued most recently is the one to which subdivision d of subsection 1 refers.
8. The "name of the settlor or testator" means:
  - a. If the settlor is a registered organization, the name of the registered organization indicated on the public organic record filed with or issued or enacted by the registered organization's jurisdiction of organization; or
  - b. In other cases, the name of the settlor or testator indicated in the trust's organic record.

**SECTION 12. AMENDMENT.** Subsection 3 of section 41-09-78 of the North Dakota Century Code is amended and reenacted as follows:

3. ~~If a debtor so changes its~~the name that a filed financing statement provides for a debtor becomes insufficient as the name of the debtor under subsection 1 of section 41-09-74 so that the financing statement becomes seriously misleading under section 41-09-77:
  - a. The financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, ~~the~~the ~~change~~filed financing statement becomes seriously misleading; and
  - b. The financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the ~~change~~filed financing statement becomes seriously misleading, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after ~~the~~the ~~change~~that event.

**SECTION 13. AMENDMENT.** Subsection 6 of section 41-09-86 of the North Dakota Century Code is amended and reenacted as follows:

6. If a debtor is a transmitting utility and a filed initial financing statement so indicates, the financing statement is effective until a termination statement is filed.

<sup>117</sup> **SECTION 14. AMENDMENT.** Subsection 2 of section 41-09-87 of the North Dakota Century Code is amended and reenacted as follows:

2. Filing does not occur with respect to a record that a filing office refuses to accept because:
  - a. The record is not communicated by a method or medium of communication authorized by the filing office;
  - b. An amount equal to or greater than the applicable filing fee is not tendered;
  - c. The filing office is unable to index the record because:
    - (1) In the case of an initial financing statement, the record does not provide a name for the debtor;
    - (2) In the case of an amendment or ~~correction~~information statement, the record:
      - (a) Does not identify the initial financing statement as required by section 41-09-83 or 41-09-89, as applicable; or
      - (b) Identifies an initial financing statement whose effectiveness has lapsed under section 41-09-86;
    - (3) In the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's ~~last name~~surname; or
    - (4) In the case of a record filed or recorded in the filing office described in subdivision a of subsection 1 of section 41-09-72, the record does not provide a sufficient description of the real property to which it relates;
  - d. In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;
  - e. In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:
    - (1) Provide a mailing address for the debtor; or

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<sup>117</sup> Section 41-09-87 was also amended by section 4 of Senate Bill No. 2249, chapter 456.

- (2) Indicate whether the name provided as the name of the debtor is the name of an individual or an organization; ~~or~~
- (3) ~~If the financing statement indicates that the debtor is an organization, provide:~~
- ~~(a) A type of organization for the debtor;~~
  - ~~(b) A jurisdiction of organization for the debtor; or~~
  - ~~(c) An organizational identification number for the debtor or indicate that the debtor has none;~~
- f. In the case of an assignment reflected in an initial financing statement under subsection 1 of section 41-09-85 or an amendment filed under subsection 2 of section 41-09-85, the record does not provide a name and mailing address for the assignee;
- g. In the case of a continuation statement, the record is not filed within the six-month period prescribed by subsection 4 of section 41-09-86; or
- h. The record does not contain the social security number or the federal tax identification number of the debtor.

**SECTION 15. AMENDMENT.** Section 41-09-89 of the North Dakota Century Code is amended and reenacted as follows:

**41-09-89. (9-518) Claim concerning inaccurate or wrongfully filed record.**

1. A person may file in the filing office ~~a correction~~an information statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.
2. ~~A correction~~An information statement under subsection 1 must:
  - a. Identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;
  - b. Indicate that it is ~~a correction~~an information statement; and
  - c. Provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.
3. A person may file in the filing office an information statement with respect to a record filed there if the person is a secured party of record with respect to the financing statement to which the record relates and believes that the person that filed the record was not entitled to do so under subsection 4 of section 41-09-80.
4. An information statement under subsection 3 must:
  - a. Identify the record to which the information statement relates by the file number assigned to the initial financing statement to which the record relates;

- b. Indicate that it is an information statement; and
  - c. Provide the basis for the person's belief that the person that filed the record was not entitled to do so under subsection 4 of section 41-09-80.
5. The filing of a ~~correction~~ information statement does not affect the effectiveness of an initial financing statement or other filed record.

**SECTION 16. AMENDMENT.** Paragraph 1 of subdivision b of subsection 2 of section 41-09-104 of the North Dakota Century Code is amended and reenacted as follows:

- (1) A default has occurred with respect to the obligation secured by the mortgage; and

**SECTION 17.** Section 41-09-132 of the North Dakota Century Code is created and enacted as follows:

**41-09-132. (9-802) Savings clause.**

1. Except as otherwise provided in this section, this Act applies to a transaction or lien within its scope, even if the transaction or lien was entered or created before this Act takes effect.
2. This Act does not affect an action, case, or proceeding commenced before this Act takes effect.

**SECTION 18.** Section 41-09-133 of the North Dakota Century Code is created and enacted as follows:

**41-09-133. (9-803) Security interest perfected before effective date.**

1. A security interest that is a perfected security interest immediately before this Act takes effect is a perfected security interest under this chapter as amended by this Act if, when this Act takes effect, the applicable requirements for attachment and perfection under this chapter as amended by this Act are satisfied without further action.
2. Except as otherwise provided in section 41-09-135, if, immediately before this Act takes effect, a security interest is a perfected security interest, but the applicable requirements for perfection under this chapter as amended by this Act are not satisfied when this Act takes effect, the security interest remains perfected thereafter only if the applicable requirements for perfection under this chapter as amended by this Act are satisfied within one year after this Act takes effect.

**SECTION 19.** Section 41-09-134 of the North Dakota Century Code is created and enacted as follows:

**41-09-134. (9-804) Security interest unperfected before effective date.**

A security interest that is an unperfected security interest immediately before this Act takes effect becomes a perfected security interest:

1. Without further action, when this Act takes effect if the applicable requirements for perfection under this chapter as amended by this Act are satisfied before or at that time; or



2. When the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

**SECTION 20.** Section 41-09-135 of the North Dakota Century Code is created and enacted as follows:

**41-09-135. (9-805) Effectiveness of action taken before effective date.**

1. The filing of a financing statement before this Act takes effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this chapter as amended by this Act.
2. This Act does not render ineffective an effective financing statement that, before this Act takes effect, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in this chapter as it existed before amendment of this Act. However, except as otherwise provided in subsections 3 and 4 and section 41-09-136, the financing statement ceases to be effective:
  - a. If the financing statement is filed in this state, at the time the financing statement would have ceased to be effective had this Act not taken effect; or
  - b. If the financing statement is filed in another jurisdiction, at the earlier of:
    - (1) The time the financing statement would have ceased to be effective under the law of that jurisdiction; or
    - (2) June 30, 2018.
3. The filing of a continuation statement after this Act takes effect does not continue the effectiveness of the financing statement filed before this Act takes effect. However, upon the timely filing of a continuation statement after this Act takes effect and in accordance with the law of the jurisdiction governing perfection as provided in this chapter as amended by this Act, the effectiveness of a financing statement filed in the same office in that jurisdiction before this Act takes effect continues for the period provided by the law of that jurisdiction.
4. Paragraph 2 of subdivision b of subsection 2 applies to a financing statement that, before this Act takes effect, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in this chapter as it existed before amendment, only to the extent that this chapter as amended by this Act provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.
5. A financing statement that includes a financing statement filed before this Act takes effect and a continuation statement filed after this Act takes effect is effective only to the extent that it satisfies the requirements of sections 41-09-72 through 41-09-97 as amended by this Act for an initial financing statement. A financing statement that indicates that the debtor is a decedent's estate indicates that the collateral is being administered by a personal representative within the meaning of subdivision b of subsection 1 of section 41-09-74 as amended by this Act. A financing statement that indicates that the

debtor is a trust or is a trustee acting with respect to property held in trust indicates that the collateral is held in a trust within the meaning of subdivision c of subsection 1 of section 41-09-74 as amended by this Act.

**SECTION 21.** Section 41-09-136 of the North Dakota Century Code is created and enacted as follows:

**41-09-136. (9-806) When initial financing statement suffices to continue effectiveness of financing statement.**

1. The filing of an initial financing statement in the office specified in section 41-09-72 continues the effectiveness of a financing statement filed before this Act takes effect if:
  - a. The filing of an initial financing statement in that office would be effective to perfect a security interest under this chapter as amended by this Act;
  - b. The pre-effective-date financing statement was filed in an office in another state; and
  - c. The initial financing statement satisfies subsection 3.
2. The filing of an initial financing statement under subsection 1 continues the effectiveness of the pre-effective-date financing statement:
  - a. If the initial financing statement is filed before this Act takes effect, for the period provided in unamended section 41-09-86 with respect to an initial financing statement; and
  - b. If the initial financing statement is filed after this Act takes effect, for the period provided in section 41-09-86 as amended by this Act with respect to an initial financing statement.
3. To be effective for purposes of subsection 1, an initial financing statement must:
  - a. Satisfy the requirements of sections 41-09-72 through 41-09-97 as amended by this Act for an initial financing statement;
  - b. Identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and
  - c. Indicate that the pre-effective-date financing statement remains effective.

**SECTION 22.** Section 41-09-137 of the North Dakota Century Code is created and enacted as follows:

**41-09-137. (9-807) Amendment of pre-effective-date financing statement.**

1. In this section, "pre-effective-date financing statement" means a financing statement filed before this Act takes effect.
2. After this Act takes effect, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information

provided in a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in this chapter as amended by this Act. However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

3. Except as otherwise provided in subsection 4, if the law of this state governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after this Act takes effect only if:
  - a. The pre-effective-date financing statement and an amendment are filed in the office specified in section 41-09-72;
  - b. An amendment is filed in the office specified in section 41-09-72 concurrently with, or after the filing in that office of, an initial financing statement that satisfies subsection 3 of section 41-09-136; or
  - c. An initial financing statement that provides the information as amended and satisfies subsection 3 of section 41-09-136 is filed in the office specified in section 41-09-72.
4. If the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under subsections 3 and 5 of section 41-09-135 or section 41-09-136.
5. Whether or not the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this state may be terminated after this Act takes effect by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies subsection 3 of section 41-09-136 has been filed in the office specified by the law of the jurisdiction governing perfection as provided in this chapter as amended by this Act as the office in which to file a financing statement.

**SECTION 23.** Section 41-09-138 of the North Dakota Century Code is created and enacted as follows:

**41-09-138. (9-808) Person entitled to file initial financing statement or continuation statement.**

A person may file an initial financing statement or a continuation statement under sections 41-09-132 through 41-09-139 if:

1. The secured party of record authorizes the filing; and
2. The filing is necessary under sections 41-09-132 through 41-09-139:
  - a. To continue the effectiveness of a financing statement filed before this Act takes effect; or
  - b. To perfect or continue the perfection of a security interest.

**SECTION 24.** Section 41-09-139 of the North Dakota Century Code is created and enacted as follows:

**41-09-139. (9-809) Priority.**

This Act determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before this Act takes effect, this chapter as it existed before amendment determines priority.

**SECTION 25. EFFECTIVE DATE.** This Act takes effect on July 1, 2013.

Approved April 4, 2011

Filed April 4, 2011

# OCCUPATIONS AND PROFESSIONS

## CHAPTER 305

### HOUSE BILL NO. 1469

(Representatives Kasper, Carlson, Ruby, Sukut)  
(Senators Nodland, Schneider)

AN ACT to amend and reenact sections 43-03-02, 43-03-09, and 43-03-15 of the North Dakota Century Code, relating to regulation of architects; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 43-03-02 of the North Dakota Century Code is amended and reenacted as follows:

#### **43-03-02. Persons exempt from regulations.**

1. The architect registration provisions of this chapter do not apply to:
  - a. A person supervising the erection, enlargement, or alteration of a building; or
  - b. A person preparing plans and specifications or designing, planning, or administering the construction contracts for the construction, alteration, remodeling, or repair of:
    - (1) A private residence;
    - (2) A building that under applicable building code ~~is not designed for occupancy by ten or more individuals~~, does not exceed two stories in height exclusive of a one-story basement, and is:
      - (a) A garage;
      - (b) A ~~commercial or industrial~~ building not considered to have a primary building code occupancy classification of assembly group A-1, educational group E, high-hazard group H, or institutional group I;
      - (c) ~~An office~~A building considered to have a primary building code occupancy classification of assembly groups A-2, A-3, A-4, or A-5; business group B; factory industrial group F; mercantile group M; or residential group R;
      - (d) A preengineered metal building;

- (e) A building for the marketing, storage, or processing of farm products; or
- (f) A warehouse; ~~or~~
- ~~(g)(3)~~ Rental apartment units that do not exceed three stories in height exclusive of a one-story basement;
- ~~(3)(4)~~ A farm building; or
- ~~(4)(5)~~ A nonstructural alteration of any nature to any building if the alteration does not affect the safety of the occupants of the building building remodeling or an addition or both, which does not change its use to a primary building code occupancy classification of assembly group A-1, educational group E, high-hazard group H, or institutional group I.
2. The landscape architect registration provisions of this chapter do not apply to:
- An architect, a professional engineer, or a land surveyor in the course of providing professional services for which otherwise licensed or registered;
  - A nursery worker, gardener, landscape designer, or landscape contractor in the course of preparing planting plans or installing plant material, to the extent these activities do not impact the public health, safety, or welfare;
  - An individual in the course of planning or otherwise caring for that individual's property; or
  - An irrigation designer, contractor, or service provider in the course of preparing irrigation plans or installing, repairing, or maintaining irrigation systems.
3. This chapter does not:
- Apply to an officer or employee of the United States government while engaged in governmental work in this state;
  - Curtail or extend the right of any other profession regulated in this state;
  - Prevent the independent employment of a registered professional engineer for any professional service related solely to civil, structural, mechanical, or electrical engineering in connection with any building or building project; or
  - Supersede, override, or amend the provisions of chapter 43-19.1 regarding registration of professional engineers and land surveyors or chapter 43-07 regarding registration of contractors.

**SECTION 2. AMENDMENT.** Section 43-03-09 of the North Dakota Century Code is amended and reenacted as follows:

**43-03-09. Prohibited acts - Injunction.**

1. A person may not practice architecture in this state unless registered as an architect under this chapter or otherwise authorized by the board. A person

may not practice landscape architecture in this state unless registered as a landscape architect under this chapter or otherwise authorized by the board.

2. A person may not fraudulently obtain or furnish a certificate of registration to practice architecture or landscape architecture.
3. A person that is not ~~licensed~~registered under this chapter may not:
  - a. Advertise, represent, or in any manner hold that person out as an architect or landscape architect;
  - b. In connection with the person's business or name, or otherwise, assume, use, or advertise any term, title, or description or engage in any other conduct that reasonably might be expected to mislead another to believe the person is an architect or landscape architect; or
  - c. Except as a copartnership of architects, engage in the practicesolicitation of architecture or landscape architecture services as an individual or corporation.
4. Through the attorney general, the board may seek to enjoin a person from committing an act in violation of this chapter. The board is not required to prove irreparable injury to enjoin a violation of this chapter.

**SECTION 3. AMENDMENT.** Section 43-03-15 of the North Dakota Century Code is amended and reenacted as follows:

**43-03-15. When examination not necessary.**

The board may admit a nonresident applicant seeking to register to practice architecture or landscape architecture in North Dakota without requiring the applicant to pass an examination if the applicant is licensed or registered to practice architecture or landscape architecture under the laws of any other state that has requirements substantially equal to those provided for under this chapter. An applicant under this section shall pay the fees provided for under section 43-03-18.

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

Approved April 15, 2011  
Filed April 15, 2011

## CHAPTER 306

### HOUSE BILL NO. 1063

(Representatives Frantsvog, Klein)  
(At the request of the Board of Barber Examiners)

AN ACT to amend and reenact subsections 1 and 2 of section 43-04-42 of the North Dakota Century Code, relating to barber licensing fees.

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

**SECTION 1. AMENDMENT.** Subsections 1 and 2 of section 43-04-42 of the North Dakota Century Code are amended and reenacted as follows:

1. The board may charge applicants the following fees:
  - a. For examination and issuance of a certificate to practice master barbering, one hundred dollars.
  - b. For examination and issuance of a certificate to practice as an apprentice barber, fifty dollars.
  - c. For renewal of a master barber's certificate, ~~fifty~~one hundred dollars.
  - d. For restoration of an expired master barber's certificate, a ~~ten~~twenty dollar penalty fee in addition to the regular renewal fee.
  - e. For renewal of an apprentice barber's certificate, twenty dollars.
  - f. For restoration of an expired apprentice barber's certificate, a ~~ten~~twenty dollar penalty fee in addition to the regular renewal fee.
  - g. For a permit to operate a barber school or college, an annual fee of one hundred twenty-five dollars.
  - h. For issuance of an annual barbershop license, ~~thirty-five~~fifty dollars, to be paid by each shopowner in advance.
  - i. For issuance of a certificate to an applicant who qualifies under section 43-04-38.1, one hundred ~~twenty-five~~seventy-five dollars.
  - j. For restoration of an expired barbershop license, a ~~ten~~twenty dollar penalty fee in addition to the annual license fee.
  - k. For renewal of an instructor's license, twenty-five dollars.
2. Each application to open or establish a barbershop in this state must be accompanied by a fee of ~~fifty~~one hundred dollars to cover expenses of inspection, which must be retained by the board and deposited as other fees.

Approved March 9, 2011  
Filed March 9, 2011



## CHAPTER 307

### SENATE BILL NO. 2100

(Government and Veterans Affairs Committee)  
(At the request of the State Electrical Board)

AN ACT to amend and reenact sections 43-09-04 and 43-09-20 of the North Dakota Century Code, relating to electricians; and to provide for a legislative management study.

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

**SECTION 1. AMENDMENT.** Section 43-09-04 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-09-04. Officers of board - Compensation of members.**

The members of the board shall select from their members a president, a treasurer, and a secretary. Each appointive member of the board ~~shall be entitled to receive such amount as may be set by the board but not more than fifty dollars per day for the actual services rendered,~~ and in addition thereto, each member shall receive the necessary and actual expenses incurred by the member in the discharge of the member's duties. The mileage and travel expense allowed may not exceed the amount provided for in section 54-06-09.

**SECTION 2. 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 made with master electrician - Requirement for liability insurance.**

No contract, agreement, or undertaking with another for the installation of electrical wiring or the installation of electrical parts of other apparatus may be entered into by anyone not a master electrician. A class B electrician, as herein defined, is authorized to enter into a contract, undertaking, or agreement for the installation 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 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 evidence of the existence of public liability insurance with a licensed insurance carrier, with policy limits of at least ~~one~~five hundred thousand dollars for a master electrician, and ~~forty~~two hundred thirty thousand dollars for a class B electrician.

**SECTION 3. LEGISLATIVE MANAGEMENT STUDY - COMPENSATION FOR MEMBERS OF BOARDS AND COMMISSIONS.** During the 2011-12 interim, the legislative management shall consider studying the statutory provisions setting

compensation rates for members of executive branch boards and commissions to determine whether it may be desirable to standardize some or all of the compensation rate provisions. The legislative management may limit the study to occupational boards and commissions. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

Approved April 19, 2011  
Filed April 20, 2011

## CHAPTER 308

### SENATE BILL NO. 2098

(Industry, Business and Labor Committee)  
(At the request of the State Board of Cosmetology)

AN ACT to create and enact a new subsection to section 43-11-02 of the North Dakota Century Code, relating to exemption from cosmetology licensure; and to amend and reenact sections 43-11-01, 43-11-03, 43-11-04, and 43-11-06, subsection 7 of section 43-11-16, sections 43-11-21, 43-11-24, 43-11-25, and 43-11-26, subdivision b of subsection 1 of section 43-11-28, and section 43-11-31 of the North Dakota Century Code, relating to fees, the practice and licensing of cosmetologists, cosmetology salons, estheticians, instructors, manicurists, and schools, and the powers, membership, and compensation of the state board of cosmetology.

#### 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. "Cosmetologist" means an individual licensed under this chapter to practice cosmetology.
3. "Cosmetology" means any one or combination of practices generally and usually performed by and known as the occupation of beauty culturists or cosmeticians or cosmetologists or hairdressers, or of any other person holding out as practicing cosmetology by whatever designation and within the meaning of this chapter and in and upon whatever place or premises; and in particular cosmetology includes the following or any one or a combination of practices: arranging, dressing, curling, waving, cleansing, cutting, singeing, bleaching, coloring, or similar work, upon the hair of any person by any means or with hands or mechanical or electrical apparatus or appliances, or by the use of cosmetic preparations, antiseptics, tonics, lotions, creams, or otherwise, massaging, cleansing, stimulating, manipulating, exercising, waxing to remove hair, beautifying, or similar work on the body, or manicuring the nails of any person.
- ~~3.4.~~ "Cosmetology salon" includes that part of any building in which the occupation of a cosmetologist is practiced.
- ~~4.5.~~ "Esthetician" means a person who is licensed by the board to engage in the practice of skin care. An esthetician does not include a professional make-up artist trained in facial make-up application by a cosmetics company.

- 5-6. "Homebound" means any person who is ill, disabled, or otherwise unable to travel to a salon.
- 6-7. "Instructor" means any person of the age of eighteen years or more, who is a licensed cosmetologist, who teaches cosmetology or any practices taught in a duly registered school of cosmetology, and who has met the requirements of section 43-11-27 and has applied for and received an instructor's license.
- 7-8. "Invasive care" means any procedure that invades the live tissue of the dermis, including:
- a. Laser use, except the use of cold laser technology using nonlinear, pulsed light application for the purpose of biostimulation without the generation of heat; and
  - b. Chemical peels, except for chemical peels using:
    - (1) Thirty percent alpha hydroxy acid, which includes glycolic acid with a pH of 3.0 or higher;
    - (2) Twenty percent beta hydroxy acid, which includes salicylic acid with a pH of 3.0 or higher; or
    - (3) Two percent resorcinol with a pH of 3.0 or higher.
- 8-9. "Manager-operator" means any person who has met the requirements of section 43-11-26 and has applied for and received a managing cosmetologist license.
- 9-10. "Manicuring" means the cleansing, cutting, shaping, beautifying, or massaging of the hands, feet, or nails of any person.
- 40-11. "Manicurist" means a person who is licensed by the board to engage in the practice of manicuring.
- ~~11. "Operator" means a person, not a student, who is licensed under the provisions of this chapter to engage in and follow any of the practices of a hairdresser or cosmetologist.~~
12. "School of cosmetology" means an establishment operated for the purpose of teaching cosmetology.
13. "Skin care" means the use of cosmetic preparations, antiseptics, tonics, lotions, creams, or otherwise, massaging, cleansing, stimulating, manipulating, waxing to remove hair, beautifying, or similar work on the body of any person. The term does not include invasive care.
14. "Student" means any person who is engaged in the learning or acquiring of any or all the practices of cosmetology and while so learning, performs or assists in any of the practices of cosmetology in any school registered or licensed and under the immediate supervision of an instructor licensed as such under this chapter.
15. "Student instructor" means a cosmetologist who is receiving instruction in teacher's training in a duly registered school of cosmetology.

16. "Tuition" means the total cost of a person's cosmetology studies, and does not include books or demonstration kits.

**SECTION 2.** A new subsection to section 43-11-02 of the North Dakota Century Code is created and enacted as follows:

Skin care provided under the supervision, control, and responsibility of a physician in the hospital, clinic, or physician's office.

**SECTION 3. AMENDMENT.** Section 43-11-03 of the North Dakota Century Code is amended and reenacted as follows:

**43-11-03. State board of cosmetology - Appointment - Term - Removal.**

The state board of cosmetology consists of ~~three~~five members appointed by the governor for three years each, with their terms of office so arranged that ~~one term expires~~no more than two terms expire on June thirtieth of each year. Each member shall qualify by taking the oath required of civil officers and shall hold office until a successor is appointed and qualified. The governor may remove from office a member for misconduct, malfeasance, neglect of duty in office, crime in office, gross incompetency, or habitual drunkenness. A vacancy on the board must be filled by appointment by the governor for the unexpired term.

**SECTION 4. AMENDMENT.** Section 43-11-04 of the North Dakota Century Code is amended and reenacted as follows:

**43-11-04. Members of board - Qualifications.**

Each member of the board must be a citizen of this state ~~and~~. Three of the members of the board must each be a licensed cosmetologist who has had at least three years' practical experience in the occupation. The other two members of the board must be citizen members, at least one of whom has professional experience as a secondary teacher or as a postsecondary educator.

**SECTION 5. AMENDMENT.** Section 43-11-06 of the North Dakota Century Code is amended and reenacted as follows:

**43-11-06. Compensation of members of board - How paid.**

Each member of the board is entitled to receive compensation ~~of one hundred dollars in the amount provided for members of the legislative management under section 54-35-10~~ for each day employed in the actual discharge of official duties, as determined by the board. ~~The secretary of the board shall receive an annual salary of not more than thirteen thousand dollars to be fixed by the board, and necessary expenses actually incurred in the performance of official duties.~~ Expenses incurred by a board member in the performance of an official function are payable by the board pursuant to sections 44-08-04 and 54-06-09. The compensation and expenses of all members of the board must be paid from the license fees and other sources of income of the board.

**SECTION 6. AMENDMENT.** Subsection 7 of section 43-11-16 of the North Dakota Century Code is amended and reenacted as follows:

7. Agrees not to:

- a. ~~Conduct a clinical department for fees after licensure by the board, until the school has been operating for a period of at least twenty percent of the total hours of instruction required by this chapter;~~
- b. Permit any student to practice on any person not an instructor or registered student of the school until the student has completed at least twenty percent of the total hours of instruction required by this chapter; or
- e-b. Compensate any of its basic students in any way; and

**SECTION 7. AMENDMENT.** Section 43-11-21 of the North Dakota Century Code is amended and reenacted as follows:

**43-11-21. Operator's Cosmetologist license - Examination required - Application - Examination - Fees.**

Each person who desires to secure an ~~operator's~~ a cosmetologist license shall file with the secretary of the board a written application under oath on a form supplied by the board. The application must be accompanied by all of the following:

1. Satisfactory proof of the educational qualifications required of a student; and
2. An examination fee as may be fixed by the board pursuant to section 43-11-28; and
3. Satisfactory proof that the applicant has completed the required training in a school of cosmetology; ~~and~~
4. A fee for original licensure as required by section 43-11-28.

**SECTION 8. AMENDMENT.** Section 43-11-24 of the North Dakota Century Code is amended and reenacted as follows:

**43-11-24. Operator's Cosmetologist license - When issued - Failure to pass examination - Reexamination - Retraining.**

~~An operator's~~ A cosmetologist license must be issued to any person who has met all the following requirements:

1. Complied with section 43-11-21; ~~and~~
2. Passed to the satisfaction of the board the examination of applicants for a license to practice under this chapter.

If the applicant fails to pass the examination, the examination fee may not be returned. If an applicant fails to pass an examination, the applicant may be examined again with the payment of a reexamination fee as set forth in section 43-11-28. An applicant who fails to pass the ~~first reexamination~~ practical examination twice must complete an additional one hundred sixty hours of training at a school of cosmetology before applying for a second reexamination.

**SECTION 9. AMENDMENT.** Section 43-11-25 of the North Dakota Century Code is amended and reenacted as follows:

**43-11-25. License issued without examination - Conditions.**

The board may dispense with the examination of applicants for licenses to practice cosmetology and may grant licenses upon the payment of a fee for original licensure and the reciprocity fee ~~provided in section 43-11-28~~ if all the following requirements are met:

1. The applicant has complied with the requirements for registration of the District of Columbia, or another state, territory, foreign country, or province where the requirements are equal substantially to those in force in this state at the time the application for the license is filed; ~~and,~~
2. The applicant passes to the satisfaction of the board an examination on sanitary practices and cosmetology law in this state.

**SECTION 10. AMENDMENT.** Section 43-11-26 of the North Dakota Century Code is amended and reenacted as follows:

**43-11-26. Manager-operator - License - Qualifications.**

~~A person~~An individual may obtain a manager-operator's license upon meeting all the following requirements:

1. Furnishing to the board evidence of having practiced as a ~~licensed operator~~cosmetologist for at least ~~one hundred twenty-five days;~~one thousand hours.
2. Paying an original licensure fee as set forth in section 43-11-28; ~~and,~~
3. Complying with the other requirements of this chapter applicable to a manager-operator.

**SECTION 11. AMENDMENT.** Subdivision b of subsection 1 of section 43-11-28 of the North Dakota Century Code is amended and reenacted as follows:

b. Examinations:

- |  |                    |
|--|--------------------|
| (1) Operator <u>practical examination</u>      | \$25.00            |
| (2) Instructors <u>practical examination</u>   | \$55.00            |
| (3) <del>Reexamination fee, operator's</del>   |                    |
| <del>(a) Practical</del>                       | <del>\$30.00</del> |
| <del>(b) Written</del>                         | <del>\$20.00</del> |
| (4) <del>Reexamination fee, instructor's</del> |                    |
| <del>(a) Practical</del>                       | <del>\$55.00</del> |
| <del>(b) Written</del>                         | <del>\$25.00</del> |
- Written examination fees are set and collected by the administrator of the examination and payment is the responsibility of the applicant.

**SECTION 12. AMENDMENT.** Section 43-11-31 of the North Dakota Century Code is amended and reenacted as follows:

**43-11-31. License - Refusal to grant - Grounds.**

The board may ~~refuse to grant a license which may be issued under this chapter to any person who~~ deny an application or discipline a licensee on any of the following grounds:

1. ~~Is guilty of fraud~~ Fraud in passing the examination; ~~;~~
2. ~~Is guilty~~ Conviction of an offense determined by the board to have a direct bearing upon a person's ability to serve the public ~~as a cosmetologist in a profession licensed by the board,~~ or ~~who,~~ following conviction of any offense, the board determines the person is not sufficiently rehabilitated under section 12.1-33-02.1; ~~;~~
3. ~~Is guilty of grossly~~ Grossly unprofessional or dishonest conduct; ~~;~~
4. ~~Is addicted~~ Addiction to the use of intoxicating liquor or drugs to such an extent as to render the person unfit to practice cosmetology; ~~;~~
5. Advertises Advertising by means of knowingly false or deceptive statements;
6. ~~Fails~~ Failure to display the license as provided in this chapter; ~~or~~ ~~;~~
7. ~~Violates~~ Violation of the provisions of this chapter or the rules adopted by the board.
8. Permitting an unlicensed person to practice cosmetology, manicuring, skin care, or teaching in a cosmetology salon or school of cosmetology.

Approved April 26, 2011  
 Filed April 26, 2011



## CHAPTER 309

### SENATE BILL NO. 2148

(Senators J. Lee, Bowman, Heckaman)  
(Representatives Devlin, Kreidt, Vigesaa)

AN ACT to amend and reenact section 43-12.1-18 of the North Dakota Century Code, relating to prescriptive practice standards for advanced practice registered nurses.

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

**SECTION 1. AMENDMENT.** Section 43-12.1-18 of the North Dakota Century Code is amended and reenacted as follows:

#### **43-12.1-18. Nursing practice standards.**

The board shall adopt rules establishing standards for nursing practice. ~~The board shall consult with the medical profession in the establishment of prescriptive practice standards for advanced practice registered nurses.~~ Prescriptive practices must be consistent with the scope of practice of the advanced practice registered nurse ~~and include evidence of a collaborative agreement with a licensed physician.~~

Approved April 1, 2011  
Filed April 1, 2011

## CHAPTER 310

### SENATE BILL NO. 2035

(Legislative Management)  
(Health and Human Services Committee)

AN ACT to amend and reenact subsection 1 of section 43-15-01 of the North Dakota Century Code, relating to pharmacist administration of immunizations and vaccinations to minors.

#### 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) The emergency maintenance of a drug delivery device used in home infusion therapy by a qualified home pharmacist when nursing service is not available;
    - (2) 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) ~~Immunization and vaccination by injection of an individual who is more than eighteen at least eleven~~ years of age, ~~upon an order by a physician or nurse practitioner authorized to prescribe such a drug or by written protocol with a physician or nurse practitioner;~~ and
      - (b) Influenza vaccination by injection or by live, attenuated influenza vaccine of an individual who is at least five years of age; and
    - (3) Provision of drugs by subcutaneous, intradermal, and intramuscular injection to an individual who is ~~more than 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.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 311

### SENATE BILL NO. 2080

(Agriculture Committee)  
(At the request of the State Board of Pharmacy)

AN ACT to create and enact a new subsection to section 43-15-02, a new subsection to section 43-15-10, and chapter 43-15.4 of the North Dakota Century Code, relating to the practice of pharmacy and dispensing veterinary prescription drugs; and to provide a penalty.

#### 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:

A veterinary dispensing technician operating within a veterinary retail facility.

**SECTION 2.** A new subsection to section 43-15-10 of the North Dakota Century Code is created and enacted as follows:

To adopt, amend, and repeal rules as may be deemed necessary by the board to register veterinary dispensing technicians pursuant to qualifications established by the board, to charge a veterinary dispensing technician an annual registration fee not to exceed fifty dollars, to provide for suspension or revocation of a veterinary dispensing technician's registration, to provide for suspension or revocation of a veterinary retail facility's license, to regulate and control veterinary retail facilities, and to regulate and control veterinary dispensing technicians.

**SECTION 3.** Chapter 43-15.4 of the North Dakota Century Code is created and enacted as follows:

#### **43-15.4-01. Definitions.**

As used in this chapter:

1. "Board" means the state board of pharmacy.
2. "Compound" means the preparation, mixing, assembling, packaging, or labeling of a drug or device.
3. "Controlled substance" means a drug, substance, or immediate precursor in schedules I through V as set out in chapter 19-03.
4. "Dispensing" means the delivery of a veterinary prescription drug pursuant to the lawful order of a licensed veterinarian and the associated recordkeeping that is relevant to that practice.
5. "Extra-label use" means the use of an approved drug in a manner that is not in accordance with the approved label directions.

6. "Nontraditional livestock" means any wildlife held in a cage, fence, enclosure, or other manmade means of confinement that limits its movement within definite boundaries or an animal that is physically altered to limit movement and facilitate capture.
7. "Veterinary prescription drugs" means drugs that are to be used or prescribed only within the context of a valid veterinarian-client-patient relationship. Veterinary prescription drugs are those drugs restricted by federal law to use by or on the order of a licensed veterinarian.
8. "Veterinarian-client-patient relationship" means:
  - a. A veterinarian has assumed the responsibility for making medical judgments regarding the health of an animal and the need for medical treatment, and the client, who is the owner or other caretaker, has agreed to follow the instructions of the veterinarian.
  - b. There is sufficient knowledge of the animal by the veterinarian to initiate at least a general or preliminary diagnosis of the medical condition of the animal.
  - c. The practicing veterinarian is readily available for followup in the case of adverse reactions or failure of the regimen of therapy. This relationship exists only when the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal by virtue of an examination of the animal and by medically appropriate and timely visits to the premises where the animal is kept.
9. "Veterinary dispensing technician" means a nonpharmacist registered by the board to dispense veterinary prescription drugs in a veterinary retail facility.
10. "Veterinary retail facility" means an establishment registered by the board employing a registered veterinary dispensing technician authorized to dispense veterinary prescription drugs pursuant to bona fide orders of veterinarians.

#### **43-15.4-02. Exemptions.**

The provisions of this chapter do not apply to the following:

1. A pharmacist or a pharmacy participating in the practice of pharmacy.
2. A licensed veterinarian or a veterinarian's practice.

#### **43-15.4-03. Veterinary retail facility - Permit required.**

A person, copartnership, association, corporation, or limited liability company may not open, establish, operate, maintain, or do business in the state of North Dakota, a veterinary retail facility without first obtaining a permit to do so from the board. Application for a permit must be made upon a form prescribed and furnished by the board and must be accompanied by a fee set by the board not to exceed three hundred dollars. A like fee must be paid upon each annual renewal thereof. Separate applications must be made and separate permits required for each veterinary retail facility opened, established, operated, or maintained by the same owner and for the change of location, name, or ownership of an existing veterinary retail facility.

**43-15.4-04. Minimum standards for veterinary retail facilities.**

The following standards apply to veterinary retail facilities:

1. Veterinary prescription drugs dispensed by a veterinary retail facility pursuant to a licensed veterinarian's prescription are for use on equidae, food-animals, and nontraditional livestock only.
2. Veterinary dispensing technicians may not:
  - a. Dispense controlled substances.
  - b. Compound veterinary prescription drugs for the dispensing of a prescription.
  - c. Repackage veterinary prescription drugs for the dispensing of a prescription, except that a veterinary dispensing technician may break down case lots of veterinary prescription drugs, provided the seals on the individual containers are not broken. Veterinary dispensing technicians may not open a container and count out or measure out any quantity of a veterinary prescription drug.
  - d. Dispense medication for extra-label use.
3. Veterinary prescription drugs returned to a veterinary retail facility from a client must be treated as damaged or outdated drugs. Returned drugs may not be returned to stock or dispensed, distributed, or resold.
4. A veterinary dispensing technician may dispense veterinary prescription drugs for use on equidae, food-animals, and nontraditional livestock on the basis of a written, electronically transmitted, or oral order received from a licensed veterinarian or the authorized agent of a licensed veterinarian. Only a veterinary dispensing technician may receive an orally transmitted new or refill prescription.
5. A veterinary dispensing technician may refill a prescription only if the initial prescription is issued indicating that a specific number of refills are authorized. A prescription may not be refilled twelve or more months after the issuance date of the initial order.
6. A veterinary dispensing technician must file, or cause to be filed, any prescription, or a copy thereof, which has been dispensed in the veterinary retail facility. The prescription or a copy of the prescription must be preserved for at least three years after it has been filled. The veterinary dispensing technician must furnish a copy of any prescription to the party presenting it on the request of such party only.
7. Records of receipt and dispensing of legend drugs must be kept for three years and may be audited by the state board of pharmacy.
8. All veterinary prescription drugs must be properly labeled when dispensed. A complete label must include the following information:
  - a. Name, address, and telephone number of veterinarian.
  - b. Name of client.

- c. Identification of animals or herds treated.
- d. Date of treatment, prescribing, or dispensing of drug.
- e. Name and quantity of the drug to be prescribed or dispensed.
- f. Dosage and duration directions for use.
- g. Cautionary statements, as needed.
- h. Expiration date.

If that information is included in a manufacturer's label, it is unnecessary to repeat it on the prescription label. If there is inadequate space on the label for complete instructions, the veterinary dispensing technician shall provide additional information to accompany the drug dispensed or prescribed.

- 9. Veterinary prescription drugs must be stored separately from over-the-counter drugs. Drugs must be stored under conditions recommended by the manufacturer.

#### **43-15.4-05. Veterinary dispensing technicians - Educational requirements.**

To be eligible to be registered by the board as a veterinary dispensing technician, an individual must meet one of the following requirements:

- 1. Successful completion of an academic program approved by the state board of pharmacy;
- 2. Successful completion of a certification program approved by the state board of pharmacy; or
- 3. Be licensed as a veterinary technician by the state board of veterinary medical examiners.

#### **43-15.4-06. Veterinary dispensing technicians - Registration requirements.**

- 1. A veterinary dispensing technician must register with the state board of pharmacy on an annual basis.
- 2. A veterinary dispensing technician must be assigned a registration number.
- 3. The state board of pharmacy shall provide the veterinary dispensing technician with an annual registration card and pocket identification card.
- 4. The veterinary dispensing technician certificate and annual registration card must be displayed and visible to the public in the veterinary retail facility where the veterinary dispensing technician is employed.
- 5. The veterinary dispensing technician must wear a name badge while in the veterinary retail facility which clearly identifies the person as a "veterinary dispensing technician."
- 6. Every registered veterinary dispensing technician, within fifteen days after changing address or place of employment, shall notify the board of the change. The board shall make the necessary changes in the board's records.

7. A veterinary dispensing technician holding a certificate of registration as a veterinary dispensing technician in this state may go on inactive status and continue to hold a certificate of registration in this state provided the technician on inactive status may not practice within this state. A veterinary dispensing technician on inactive status may not be required to meet the continuing education requirements of the board under section 43-15.4-08. In order for a veterinary dispensing technician to change an inactive status of registration to an active status of registration, the veterinary dispensing technician must complete eight hours of approved continuing education and thereafter comply with the continuing education requirements of the board.

#### **43-15.4-07. Veterinary dispensing technician continuing education.**

1. Each registered veterinary dispensing technician shall complete at least eight hours of approved continuing education every year as a condition of renewal of a registration as a veterinary dispensing technician in this state. Of the required eight hours of continuing education, at least four hours must be of pharmacy technician continuing education approved by the state board of pharmacy and at least four hours must be of veterinary technician continuing education approved by the state board of veterinary medical examiners.
2. There may be no carryover or extension of continuing education units with the exception that continuing education units obtained twelve months prior to the beginning of each annual reporting period may be used in the current annual reporting period which begins March first of each year and ends the last day of February, or the previous reporting period. However, the units may not be counted as credit in both reporting periods. Failure to obtain the required eight hours of continuing education by the renewal date may result in suspension for a minimum of thirty days or a maximum of the period ending the date the continuing education is completed.
3. Veterinary dispensing technicians shall maintain their own records on forms supplied by the board. The records must be maintained for a two-year period.
4. The requirements of this section do not apply to a veterinary dispensing technician applying for a first renewal of a registration.
5. A veterinary dispensing technician registered with the board may make application to the board for a waiver of compliance with the continuing education requirements and may be granted an exemption by the board.
6. Upon request of the board, proof of compliance must be furnished to the board.

#### **43-15.4-08. Penalties for violation of rule regulating veterinary dispensing technicians.**

1. The registration of a veterinary dispensing technician violating drug laws or rules may be revoked by the state board of pharmacy, and the veterinary dispensing technician may be subject to the penalties of section 43-15-42.1.
2. The license of a veterinary retail facility violating drug laws or rules may be revoked by the state board of pharmacy and the veterinary retail facility may be subject to the penalties of section 43-15-42.1.

## CHAPTER 312

### SENATE BILL NO. 2154

(Senators J. Lee, Hogue, Warner)  
(Representatives Hogan, Porter, Weisz)

AN ACT to amend and reenact section 43-17-03 of the North Dakota Century Code, relating to membership of the state board of medical examiners; and to provide for application.

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

**SECTION 1. AMENDMENT.** Section 43-17-03 of the North Dakota Century Code is amended and reenacted as follows:

#### **43-17-03. State board of medical examiners - How appointed - Qualifications.**

1. The governor shall appoint a state board of medical examiners consisting of ~~twelve~~thirteen members, nine of whom are doctors of medicine, one of whom is a doctor of osteopathy, one of whom is a physician assistant, and two of whom are designated as public members. If no osteopathic physician is qualified and willing to serve, any qualified physician may be appointed in place of the osteopathic physician.
2. Each physician member must:
  - a. Be a practicing physician of integrity and ability.
  - b. Be a resident of and duly licensed to practice medicine in this state.
  - c. Be a graduate of a medical or osteopathic school of high educational requirements and standing.
  - d. Have been engaged in the active practice of the physician's profession within this state for a period of at least five years.
3. Each public member of the board must:
  - a. Be a resident of this state.
  - b. Be at least twenty-one years of age.
  - c. Not be affiliated with any group or profession that provides or regulates health care in any form.
4. ~~A person~~The physician assistant member of the board must:
  - a. Be a practicing physician assistant of integrity and ability.
  - b. Be a resident of and be duly licensed to practice as a physician assistant in this state.



- c. Have been engaged in the active practice as a physician assistant within this state for a period of at least five years.
5. An individual appointed to the board shall qualify by taking the oath required of civil officers.

**SECTION 2. APPLICATION.** Under section 1 of this Act, the term of office of the physician assistant appointed August 1, 2011, is a five-year term and is thereafter a four-year term in order to establish a staggered arrangement of board terms in compliance with section 43-17-04.

Approved April 19, 2011  
Filed April 19, 2011

## CHAPTER 313

### HOUSE BILL NO. 1222

(Representative Keiser)  
(Senators Berry, Klein)

AN ACT to amend and reenact subsection 3 of section 43-17-18 of the North Dakota Century Code, relating to graduates of international medical schools.

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

**SECTION 1. AMENDMENT.** Subsection 3 of section 43-17-18 of the North Dakota Century Code is amended and reenacted as follows:

3. Graduates of international schools.
  - a. An applicant who is a graduate of a medical school not located in the United States, its possessions, territories, or Canada, shall present evidence, satisfactory to the board, that the applicant possesses the degree of doctor of medicine or a board-approved equivalent based on satisfactory completion of educational programs acceptable to the board. Graduates of osteopathic schools located outside the United States are not eligible for licensure.
  - b. An applicant who has graduated from a medical school not located in the United States, its possessions, territories, or Canada, must present evidence, satisfactory to the board, that the applicant has successfully completed ~~three years~~thirty months of postgraduate training in a program located in the United States, its possessions, territories, or Canada, and accredited by a national accrediting organization approved by the board or other graduate training approved in advance by the board as meeting standards similar to those of a national accrediting organization. However, if such an applicant has not completed ~~three years~~thirty months of postgraduate training in a program approved by the board or by an accrediting body approved by the board, but has met all other licensing requirements and has successfully completed one year of postgraduate training in the United States or Canada in a program approved by the board, and if the board finds that the applicant has other professional experience and training that is substantially equivalent to the ~~second and third year~~last eighteen months of postgraduate training, then the applicant may be deemed eligible for licensure. The board is granted broad discretion in determining whether to apply this exception to the normal licensing requirements. An applicant seeking licensure under this exception must present evidence satisfactory to the board that:
    - (1) The applicant is certified by a specialty board recognized by the American board of medical specialties or by a specialty board recognized by the royal college of physicians and surgeons of Canada; or
    - (2) The applicant has passed the special purpose examination developed by the federation of state medical boards of the United States.

- c. The applicant shall present evidence satisfactory to the board that the applicant has been awarded a certificate by the educational council for foreign medical graduates. The board may adopt rules establishing specific exceptions to this requirement.
- d. The applicant has a working ability in the English language sufficient to communicate with patients and physicians and to engage in the practice of medicine.

Approved April 11, 2011  
Filed April 11, 2011

## CHAPTER 314

### SENATE BILL NO. 2243

(Senators Nodland, Laffen)  
(Representatives Frantsvog, Gruchalla, Kreun)

AN ACT to create and enact a new subsection to section 43-19.1-29 of the North Dakota Century Code, relating to exemptions to regulation by the state board of registration for professional engineers and land surveyors; and to amend and reenact section 43-19.1-02 and subsection 1 of section 43-19.1-27 of the North Dakota Century Code, relating to regulation of professional engineers and land surveyors.

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

**SECTION 1. AMENDMENT.** Section 43-19.1-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-19.1-02. Definitions.**

In this chapter unless the context otherwise requires:

1. "Board" means the state board of registration for professional engineers and land surveyors.
2. "Engineer" means a professional engineer.
3. "Engineer intern" means an individual who complies with the requirements for education, experience, and character and who has passed an examination in the fundamental engineering subjects, as provided in sections 43-19.1-12 and 43-19.1-15.
4. "~~Land surveying" means any service comprising the determination of the location of land boundaries and land boundary corners; incidental topography; the preparation of maps showing the shape and area of tracts of land and their subdivision into smaller tracts; the preparation of maps showing the layouts of roads, streets, and rights of way of same to give access to smaller tracts; and the preparation of official plats or maps of land within this state.~~"Engineering surveys" means all survey activities required to support the sound conception, planning, design, construction, maintenance, and operation of engineered projects, which include locating or laying out alignments, positions, or elevations for the construction of fixed works. The term does not include the surveying of real property for the establishment of land boundaries, rights of way, easements, and the dependent or independent surveys or resurveys of the public land survey system.
5. "Land surveyor" means an individual engaged in the practice of land surveying.
6. "Land surveyor intern" means an individual who complies with the requirements for education, experience, and character and who has passed

an examination in the fundamentals of mathematics and the basic principles of land surveying as required in this chapter and as established by the board.

7. "Practice of engineering and practice of professional engineering" means any service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems, engineering teaching of advanced engineering subjects or courses related thereto, engineering surveys, and the inspection of construction for the purpose of assuring compliance with drawings and specifications; any of which embraces such service or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, or projects as are incidental to the practice of engineering. A person must be construed to practice or offer to practice engineering if the person practices any branch of the profession of engineering; if the person, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents that the person is an engineer and is able to practice engineering in this state if the person through the use of some other title implies that the person is an engineer or that the person is registered under this chapter; or if the person holds out as able to perform, or does perform any engineering service or work or any other service that is recognized as engineering, for a valuable consideration for others, including the public at large. ~~The practice of engineering does not mean or include the practice of engineering by a person exempt under the provisions of section 43-19.1-29, nor the work ordinarily performed by a person that operates or maintains machinery or equipment. Notwithstanding the foregoing provisions, a person may not be construed to practice engineering unless that person offers engineering services to, or performs such engineering for, the public.~~
8. "Practice of land surveying":
  - a. Means making land boundary determinations by providing or offering to provide professional services using such sciences as mathematics, geodesy, and photogrammetry and involving the making of geometric measurements and gathering related information pertaining to the physical or legal features of the earth; improvements on the earth; and improvements on the space above, on, or below the earth and providing, utilizing, or developing the same into land survey products such as graphics, data, maps, plans, reports, descriptions, or projects. As used in this subsection, professional services include acts of consultation, investigation, testimony evaluation, expert technical testimony, planning, mapping, assembling, and interpreting gathered measurements and information related to any one or more of the following:
    - (1) Determining by measurement the configuration or contour of the earth's surface or the position of fixed objects on the earth's surface;
    - (2) Determining by performing geodetic land surveys the size and shape of the earth or the position of any point on the earth;
    - (3) Locating, relocating, establishing, reestablishing, or retracing property lines or boundaries of any tract of land, road, right of way, or easement;

- (4) Making any land survey for the division, subdivision, or consolidation of any tract of land;
- (5) Locating or laying out alignments, positions, or elevations for the construction of fixed works;
- (6) Determining by the use of principles of land surveying the position for any survey monument, boundary or nonboundary, or reference point and establishing or replacing any such monument or reference point; and
- (7) Creating, preparing, or modifying electronic or computerized or other data for the purpose of making land boundary determinations relative to the performance of the activities in paragraphs 1 through 6.

b. Includes:

- (1) Engaging in land surveying;
- (2) By verbal claim, sign, advertisement, letterhead, card, or any other way representing to a person to be a professional land surveyor;
- (3) Through the use of some other title implying to be a professional land surveyor or that the person is licensed or authorized under this chapter; and
- (4) Holding out as able to perform or performing any land surveying service or work or any other service designated by the practitioner which is recognized as land surveying.

9. "Professional engineer" means an individual who by reason of special knowledge or use of the mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design, acquired by engineering education and engineering experience, is qualified to practice engineering, and who has been registered and licensed by the state board of registration for professional engineers and land surveyors.

9-10. "Professional land surveyor" means a land surveyor who complies with the requirements for education, experience, and character and who has been registered and licensed by the board.

40-11. "Responsible charge" means direct control and personal supervision of engineering or surveying work.

44-12. "Retired registrant" means a duly registered professional engineer or land surveyor who is not engaged in active professional practice and is not required to meet the continuing professional education requirements as prescribed by the board. A retired registrant is issued a certificate of registration indicating "retired" status.

12. ~~"The practice or offer to practice surveying" includes the engagement of any person in land surveying or the representation by any person by verbal claim, sign, letterhead, card, or in any other manner, that such person is a land surveyor and is able to perform land surveying in this state.~~

**SECTION 2. AMENDMENT.** Subsection 1 of section 43-19.1-27 of the North Dakota Century Code is amended and reenacted as follows:

1. A person may not practice or offer to practice professional engineering or land surveying unless the person is an individual registered to practice under or exempt from the provisions of this chapter. The practice of engineering by a professional engineer which includes service or creative work that is included in both the definition of the practice of engineering and the definition of land surveying does not require registration as a professional land surveyor. The practice of land surveying by a professional land surveyor which includes a service or creative work that is included in both the definition of the practice of engineering and the definition of land surveying does not require registration as a professional engineer.

**SECTION 3.** A new subsection to section 43-19.1-29 of the North Dakota Century Code is created and enacted as follows:

The performance of work ordinarily performed by a person that operates or maintains machinery or equipment.

Approved April 26, 2011

Filed April 26, 2011

## CHAPTER 315

### SENATE BILL NO. 2173

(Senators Burckhard, Dotzenrod, Laffen)  
(Representative Brabandt)

AN ACT to amend and reenact subsection 3 of section 43-19.1-14 of the North Dakota Century Code, relating to an applicant otherwise qualified for registration as a professional engineer and additional qualifications.

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

**SECTION 1. AMENDMENT.** Subsection 3 of section 43-19.1-14 of the North Dakota Century Code is amended and reenacted as follows:

3. Is an engineer intern with a specific record of at least twenty years of lawful practice in engineering work during at least ten years of which the applicant has been in responsible charge of important engineering work which is of a grade and character that indicates to the board that the applicant is competent to practice engineering, who has been approved for the fundamentals of engineering examination by the board before July 1, 2004, and who holds a valid engineer intern certificate as of ~~July 1, 2004~~January 1, 2006.

Approved April 26, 2011  
Filed April 26, 2011



## CHAPTER 316

### HOUSE BILL NO. 1430

(Representatives Louser, Klemin, Weiler)  
(Senators Hogue, J. Lee)

AN ACT to amend and reenact sections 43-23-06.1 and 43-23-12.1 of the North Dakota Century Code, relating to definitions and the duties of real estate brokerage firms.

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

**SECTION 1. AMENDMENT.** Section 43-23-06.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-23-06.1. Definitions.**

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

1. "Appointed agent" means a licensee appointed by a designated broker of the licensee's real estate brokerage firm to act solely for a client of that brokerage firm to the exclusion of other licensees of that brokerage firm.
2. "Client" means a person ~~who~~that has entered ~~into~~ a written agency agreement with a real estate brokerage firm.
3. "Commission" means the North Dakota real estate commission.
4. "Customer" means a buyer, prospective buyer, seller, lessee, or lessor that is not represented by that real estate brokerage firm in a real property transaction.
5. "Designated broker" means a licensee designated by a real estate brokerage firm to act on behalf of the brokerage firm.
- 5-6. "Dual agency" means a situation in which a real estate brokerage firm, ~~or the real estate brokerage firm's~~ licensees, owe a duty to more than one party in a real estate transaction. Dual agency is established only as follows:
  - a. When one licensee represents both the buyer and the seller in a real estate transaction; or
  - b. When two or more licensees, licensed to the same broker, each represents a party to the real estate transaction.

"Dual agency" does not exist unless both the seller and the buyer in a real estate transaction have written agency agreements with the same real estate brokerage firm. For purposes of "dual agency" a subagency arrangement is not a written agency agreement.

6. ~~"Person" includes individuals, corporations, limited liability companies, partnerships, trusts, associations, cooperatives, or other firms or entities, foreign or domestic.~~
7. "Licensee" means a real estate broker, an associate real estate broker, or a real estate salesperson who is associated with a real estate brokerage firm.
8. "Real estate", "real property", "realty", or words of like import, means any interest or estate in land, including leaseholds, whether such interest or estate is corporeal, incorporeal, freehold, or nonfreehold, and whether situated in this state or elsewhere; provided, however, that the meaning as used in this chapter does not include oil, gas, or mineral leases, nor does it include any other mineral leasehold, mineral estate, or mineral interest of any nature whatsoever.
- ~~8-9.~~ "Real estate broker", or "broker", means any person ~~who~~that, for another, for a fee, commission, salary, or other consideration, or with the intention or expectation of receiving or collecting such compensation from another, engages in or offers or attempts to engage in, either directly or indirectly by a continuing course of conduct or by a single act or transaction, any of the following acts:
- a. Lists, offers, attempts, or agrees to list real estate or any interest ~~therein~~that real estate, or any improvements affixed ~~thereon~~on that real estate for sale, exchange, or lease.
  - b. Sells, exchanges, purchases, or leases real estate or any interest ~~therein~~that real estate, or any improvements affixed ~~thereon~~on that real estate.
  - c. Offers to sell, exchange, purchase, or lease real estate or any interest ~~therein~~that real estate, or any improvements affixed ~~thereon~~on that real estate.
  - d. Negotiates, or offers, attempts, or agrees to negotiate the sale, exchange, purchase, or leasing of real estate or any interest ~~therein~~that real estate, or any improvements affixed ~~thereon~~on that real estate.
  - e. Buys, sells, offers to buy or sell, or otherwise deals in options on real estate or any interest ~~therein~~that real estate, or any improvements ~~thereon~~on that real estate.
  - f. Who is a licensee under this chapter and performs any of the acts set out in this subsection while acting in the licensee's own behalf.
  - g. Advertises or holds out as being engaged in the business of buying, selling, exchanging, or leasing of real estate or any interest ~~therein~~that real estate, or any improvements ~~thereon~~on that real estate.
  - h. Assists or directs in the procuring of prospects, calculated to result in the sale, exchange, or leasing of real estate or any interest ~~therein~~that real estate, or any improvements ~~thereon~~on that real estate.
- 9-10. "Real estate brokerage firm" means a person that is providing real estate brokerage services through that person's licensees and which is licensed by the commission as a real estate brokerage firm.

~~40-11.~~ "Real estate salesperson" means any person ~~whothat~~ for a fee, compensation, salary, or other consideration, or in the expectation or upon the promise ~~thereof~~ of that compensation, is employed or engaged by a licensed real estate broker to do any act or deal in any transaction as provided in subsection ~~56~~ for or on behalf of such licensed real estate broker.

**SECTION 2. AMENDMENT.** Section 43-23-12.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-23-12.1. Real estate brokerage firm - Duties required.**

1. A real estate brokerage firm and ~~the~~ the real estate brokerage firm's licensees, ~~that~~ which provide services through a written agency agreement for a client, are bound to that client by the duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence, and accounting, subject to the provisions of this chapter and subject to any rules adopted under this chapter. The agency relationship, which must be established through a written agency agreement, may be a seller ~~agent~~ agency, a buyer ~~agent~~ agency, or a ~~subagent~~ dual agency, an appointed agency, a subagency, or, if another form of agency relationship. If a different relationship, including a nonagency relationship with a customer, between the real estate brokerage firm and the person for ~~whom~~ which the real estate brokerage firm performs the services is intended, ~~including a dual agent,~~ the relationship must be disclosed in writing pursuant to rules adopted by the board.
2. If a buyer, prospective buyer, or seller is not represented by a real estate brokerage firm in the real property transaction, that buyer or seller remains a customer, and, as to that customer, the real estate brokerage firm and the real estate brokerage firm's licensees are nonagents that owe the following legal duties: to perform customary acts typically performed by real estate licensees in assisting a transaction to the transaction's closing or conclusion if these acts are to assist the customer for which the services are directly provided; to perform these acts with honesty and good faith; and to disclose to the customer any adverse material facts actually known by the licensee which pertain to the title of the real property, the physical condition of the real property, and defects in the real property. These limited duties are subordinate to any duties the real estate brokerage firm and the real estate brokerage firm's licensees owe to a client in the same transaction.
3. Unless otherwise agreed in writing, a real estate brokerage firm and the real estate brokerage firm's licensees are not obligated to a client, to a customer, or to any other person to discover defects in any real property, to verify the ownership of any real property, or to independently verify the accuracy or completeness of any statement or representation made by any person other than the real estate brokerage firm and the real estate brokerage firm's licensees involved in the transaction under question.
4. Unless the licensee is directly involved in a transaction regarding the affected real property, this section does not result in imputing knowledge, regarding the affected real property, of one licensee within a real estate brokerage firm to another licensee within the same real estate brokerage firm or in imposing a duty upon a licensee within a real estate brokerage firm to disclose facts that are known by that licensee regarding the affected real property to another licensee within the same real estate brokerage firm.

5. If a real estate brokerage firm and the real estate brokerage firm's licensees represent two or more buyers or lessees as clients that desire to make an offer for the purchase or lease of the same real property, the real estate brokerage firm and the real estate brokerage firm's licensees do not breach any duty by assisting such clients with multiple offers, even though the interests of such clients are competing, and are not required to disclose the existence of competing offers, except as otherwise set forth under this subsection. The real estate brokerage firm and the real estate brokerage firm's licensees shall continue to honor agency duties to such clients, except as limited under this subsection. However, if an individual licensee has a written agency agreement with two or more buyers that desire to make an offer for the purchase or lease of the same real property, that licensee shall disclose to those competing buyer clients the fact that a competing written offer has been submitted by another buyer client of that licensee.
  
6. If a real estate brokerage firm and the real estate brokerage firm's licensees represent two or more sellers or lessors as clients that desire to offer competing real property for sale or lease, the real estate brokerage firm and the real estate brokerage firm's licensees do not breach any duty to such clients by performing such services, even though the interests of such clients are competing. In such event, the real estate brokerage firm and the real estate brokerage firm's licensees shall continue to honor agency duties to such clients, except as limited under this subsection.

Approved April 8, 2011  
Filed April 11, 2011

## CHAPTER 317

### SENATE BILL NO. 2187

(Senators Olafson, Fischer, Heckaman)  
(Representatives R. Kelsch, Boehning, Wieland)

AN ACT to amend and reenact sections 43-23.3-02, 43-23.3-03, and 43-23.3-04.1 of the North Dakota Century Code, relating to the North Dakota real estate appraiser qualifications and ethics board and appraiser permit approval standards; to provide for application; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 43-23.3-02 of the North Dakota Century Code is amended and reenacted as follows:

#### **43-23.3-02. North Dakota real estate appraiser qualifications and ethics board.**

1. The governor shall appoint the board. The board must consist of five members. One member must represent the public; one member must ~~represent~~ be a representative of the financial industry; and three members must be appraisers, at least one of which is experienced in the appraisal of agricultural property. ~~The appraiser members first appointed to the board must be members in good standing of an organization belonging to the appraisal foundation or have the equivalent of five years of full-time experience as an appraiser in this state. Thereafter, each~~
  - a. Each appraiser member of the board must be either a licensed or certified appraiser, but at least two of the appraiser members must be certified appraisers.
  - b. The governor shall appoint the financial industry representative from a list of qualified individuals submitted by the North Dakota bankers associations, ~~the North Dakota credit union league, and the North Dakota league of savings institutions, the credit union association of the Dakotas, and the North Dakota farm credit system associations.~~ Each of these entities may submit two names of candidates to the governor. The public member of the board may not be engaged in the practice of real estate appraising.
2. The term of each member is five years, ~~except that of the members first appointed, one shall serve for five years, one shall serve for four years, one shall serve for three years, one shall serve for two years, and one shall serve for one year. A member may not serve more than two consecutive five-year terms, after which at least two years must pass before the governor may reappoint that former member to the board. The governor shall appoint members so the terms of no more than two members expire each year. A member of the board continues to hold office until the appointment and qualification of a successor. The governor may remove a board member for cause. The~~

3. ~~Annually the~~ members ~~annually~~ shall elect a chairman from among the members. At least two of the members who are appraiser members must be present in order for a quorum to exist. The members are entitled to receive compensation for each day actually engaged in the service of the board and actual and necessary traveling expenses at the rate allowed other state officials, paid from the fees collected by the board.

**SECTION 2. AMENDMENT.** Section 43-23.3-03 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.3-03. Powers and duties of the board.**

1. The board, or ~~it~~the board's designated representative, shall:
  - a. Define apprentice appraiser, licensed appraiser, certified residential appraiser, and certified general appraiser; determine the type of educational experience, appraisal experience, and equivalent experience that meet the requirements of this chapter; ~~and~~; establish application procedures; and establish standards for approval and disapproval of applications for permits.
  - b. Establish examination specifications for each category of licensed and certified appraiser and administer examinations.
  - c. Approve or disapprove applications for permits, issue pocket cards and permits to practice, and maintain a registry of the names and addresses of individuals holding permits.
  - d. Discipline permittees.
  - e. Hold meetings, hearings, and examinations in places and at times as ~~the~~the board designates and maintain records of board activities.
  - f. Adopt rules, pursuant to chapter 28-32, necessary to implement this chapter or carry out the requirements imposed by federal law.
  - g. Adopt rules that clearly and concisely establish the standards for approval and disapproval of applications for permits. The rules must include a requirement that an application disapproval clearly specify the basis for the disapproval.
  - h. Keep permittees informed of board activities, including providing notification of board member terms and any upcoming board vacancy; internet posting of meeting notices and minutes; and internet posting of proposed and final rule changes.
2. The board, or ~~it~~the board's designated representative, may:
  - a. Promote research and conduct studies relative to real estate appraising and sponsor educational activities.
  - b. Contract for services necessary to carry out this chapter.
  - c. Enter ~~into~~ reciprocity agreements with other states.

3. The board, or ~~the board's~~ authorized representative, may investigate and gather evidence concerning alleged violations of the provisions of chapter 43-23.3 or the rules of the board. Board investigative files are exempt records as defined in subsection 5 of section 44-04-17.1, but a copy of the investigative file must be provided to a licensee if a complaint is filed against the licensee by the board.

**SECTION 3. AMENDMENT.** Section 43-23.3-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.3-04.1. Issuance of permits to applicants licensed or certified by another state.**

The board ~~may~~shall issue a permit to an applicant who is licensed or certified in good standing by another state if the other state's requirements to be licensed or certified are at least substantially equivalent to the requirements imposed by this state, and if grounds for denial of the application under section 43-23.3-18 do not exist. If an applicant was licensed or certified by another state by reciprocity or a similar process, the requirements of the state in which the applicant was originally licensed or certified must be at least substantially equivalent to the requirements imposed by this state. Within sixty days of filing a completed application, the board shall issue or deny the application and inform the applicant of the decision.

**SECTION 4. APPLICATION.** The change in the term limits for board members provided for under section 1 of this Act applies to board member appointments and reappointments made after July 31, 2011; therefore, the new term limit provisions do not disqualify any board member serving on the effective date of this Act, but may prevent the governor from reappointing a board member after the effective date of this Act.

**SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 27, 2011

Filed April 27, 2011

## CHAPTER 318

### HOUSE BILL NO. 1304

(Representatives S. Meyer, Weisz, Delmore, Holman)  
(Senators Bowman, Erbele)

AN ACT to create and enact a new subsection to section 43-25-04 of the North Dakota Century Code, relating to an exemption from massage therapy licensure for energy workers.

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

**SECTION 1.** A new subsection to section 43-25-04 of the North Dakota Century Code is created and enacted as follows:

Any individual practicing healing by manipulating the energy field or the flow of energy of the human body by means other than the manipulation of the soft tissues of the human body, provided that the individual's services are not designated or implied to be massage or massage therapy. For purposes of this subsection, a light touch or tap is not a manipulation of the soft tissues of the human body.

Approved April 4, 2011  
Filed April 4, 2011



## CHAPTER 319

### SENATE BILL NO. 2146

(Senators J. Lee, Uglem, Heckaman)  
(Representatives Devlin, Weisz, Trottier)

AN ACT to amend and reenact section 43-28.1-10 of the North Dakota Century Code, relating to the new dental practice grant program.

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

**SECTION 1. AMENDMENT.** Section 43-28.1-10 of the North Dakota Century Code is amended and reenacted as follows:

#### **43-28.1-10. New practices - Grants.**

1. A dentist who graduated from an accredited dental school within the previous five years and is licensed to practice in North Dakota may submit an application to the state health council for a grant for the purpose of establishing a dental practice in a city in the state which has a population that does not exceed seven thousand five hundred.
2. The state health council may award a maximum of two grants per year and shall establish the criteria for the grant program under subsection 1 which must include:
  - a. A maximum grant award of fifty thousand dollars per applicant;
  - b. A requirement that the community must provide a fifty percent dollar or in-kind match for a grant;
  - c. A requirement that a dentist who receives a grant under this section must use the funds for buildings, equipment, and operating expenses;
  - d. A provision that the grant must be distributed in equal amounts over a five-year period; and
  - e. A requirement that a dentist selected for a grant under this section must commit to practice in the community for a minimum of five years.

Approved April 19, 2011  
Filed April 19, 2011

## CHAPTER 320

### SENATE BILL NO. 2088

(Agriculture Committee)

(At the request of the State Board of Veterinary Medical Examiners)

AN ACT to create and enact a new section to chapter 43-29 of the North Dakota Century Code, relating to dispensing of veterinary prescription drugs; and to amend and reenact subdivision o of subsection 1 of section 43-29-14 of the North Dakota Century Code, relating to dispensing of veterinary prescription drugs.

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

**SECTION 1. AMENDMENT.** Subdivision o of subsection 1 of section 43-29-14 of the North Dakota Century Code is amended and reenacted as follows:

- o. The use, prescription, or ~~sale~~dispensing of any veterinary prescription drug, or the prescription or ~~an~~ extra-label use of any over-the-counter drug, in the absence of a valid veterinarian-client-patient relationship, except as provided by section 2 of this Act.

**SECTION 2.** A new section to chapter 43-29 of the North Dakota Century Code is created and enacted as follows:

#### Veterinary prescription drugs.

1. Except as provided under subsection 2, a veterinary prescription drug must be dispensed, used, or prescribed within the context of a veterinarian-client-patient relationship.
2. Other than a controlled substance, a licensed veterinarian may dispense a veterinary prescription drug without establishing a veterinarian-client-patient relationship if:
  - a. The drug is prescribed by a licensed veterinarian or by a veterinarian licensed in another jurisdiction who has established a veterinarian-client-patient relationship;
  - b. The prescribing veterinarian has an inadequate supply of the drug, failure to dispense the drug would interrupt a therapeutic regimen, or failure to dispense the drug would cause an animal to suffer; and
  - c. The dispensing veterinarian verifies the prescription with the prescribing veterinarian.

Approved April 19, 2011  
Filed April 19, 2011

## CHAPTER 321

### SENATE BILL NO. 2341

(Senators Erbele, Olafson, Taylor)  
(Representatives Boe, D. Johnson, J. Nelson)

AN ACT to amend and reenact sections 43-29.1-01, 43-29.1-02, 43-29.1-03, 43-29.1-07, and 43-29.1-08 of the North Dakota Century Code, relating to the veterinarian loan repayment program; and to provide a continuing appropriation.

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

**SECTION 1. AMENDMENT.** Section 43-29.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**43-29.1-01. Loan repayment program - Veterinarians - Maximum amount of funds.**

Each year the state health council, in consultation with the state board of animal health, shall select ~~from a pool of qualified applicants no more than three veterinarians who shall~~ participate in a loan repayment program, as provided for in this chapter. Each applicant must be a veterinarian and must agree to provide food animal veterinary medicine services to communities in this state. The veterinarians selected applicants are eligible to receive up to eighty thousand dollars in loan repayment funds. If the state health council accepts any gifts, grants, or donations under this chapter, The number of applicants that the council may select additional veterinarians for participation in the loan repayment program under is limited only by the moneys available to support the program, as provided for in this chapter.

**SECTION 2. AMENDMENT.** Section 43-29.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**43-29.1-02. Loan repayment program - Veterinarians - Powers of state health council.**

The state health council may:

1. Determine the eligibility and qualifications of an applicant for loan repayment funds under this chapter.;
2. Identify communities that are in need of a veterinarian and establish a priority ranking for participation in the program by the selected communities.;
3. Create and distribute a loan repayment application.;
4. Determine the amount of the loan repayment funds for which ~~a veterinarian is an applicant may be~~ eligible under this chapter and, in making this determination, examine any outstanding education loans incurred by the applicant.;
5. Establish conditions regarding the use of the loan repayment funds.;

6. Enter a nonrenewable contract with the ~~veterinarian~~selected applicant and the selected community to provide to the ~~veterinarian~~applicant funds for the repayment of education loans in exchange for the ~~veterinarian~~applicant agreeing to actively practice in the selected community-;
7. Receive and use funds appropriated for the program-;
8. Enforce any contract under the program-;
9. Cancel a contract for reasonable cause-;
10. Participate in federal programs that support the repayment of education loans incurred by veterinarians and agree to the conditions of the federal programs-;
11. Accept property from an entity-; and
12. Cooperate with the state department of health to effectuate this chapter.

**SECTION 3. AMENDMENT.** Section 43-29.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**43-29.1-03. Veterinarian selection criteria - Eligibility for loan repayment.**

1. In establishing the criteria regarding a ~~veterinarian's~~ eligibility for loan repayment funds under this chapter, the state health council shall consider the applicant's:
  - a. ~~Consider the veterinarian's training~~Training in food animal veterinary medicine, ability ~~and,~~ willingness ~~of the veterinarian~~ to engage in food animal veterinary medicine, and the extent to which such services are needed in a selected community-;
  - b. ~~Consider the veterinarian's commitment~~Commitment to serve in a community that is in need of a veterinarian-;
  - c. ~~Consider the compatibility of the veterinarian~~Compatibility with a selected community-;
  - d. ~~Consider the date by which the veterinarian would be available~~Date of availability for service to the selected community-; and
  - e. ~~Consider the veterinarian's competence~~Competence and professional conduct.
  - f. ~~Give priority to a veterinarian on whose behalf state-funded student support fees have not been paid.~~
2. ~~A veterinarian who is~~An applicant selected to receive loan repayment funds under this chapter must:
  - a. ~~Must have~~Have graduated from an accredited college of veterinary medicine; and
  - b. ~~Must be~~Be licensed to practice veterinary medicine in this state.

3. ~~Veterinarians~~ A selected applicant shall contract to provide full-time veterinary medicine services for two, three, or four years in one or more selected communities.

**SECTION 4. AMENDMENT.** Section 43-29.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**43-29.1-07. Loan repayment.**

1.
  - a. Upon completing six months of the first year of service, as required by the contract, the veterinarian is eligible to receive a loan payment in an amount up to fifteen thousand dollars.
  - b. Upon completing a second year of service, as required by the contract, the veterinarian is eligible to receive a loan payment in an amount up to fifteen thousand dollars.
  - c. Upon completing a third year of service, as required by the contract, the veterinarian is eligible to receive a loan payment in an amount up to twenty-five thousand dollars.
  - d. Upon completing a fourth year of service, as required by the contract, the veterinarian is eligible to receive a loan payment in an amount up to twenty-five thousand dollars.
2. All payments under this section must be made on the veterinarian's behalf to the issuer of the student loan. ~~No individual may~~
3. A veterinarian is not entitled to receive more than eighty thousand dollars under this section.
4. If an individual fails to complete an entire year of service, the amount repayable under this section for that year must be prorated.
5. If any moneys remain in the state veterinary loan repayment account after the health council has met all statutory and contractual obligations established under this chapter, the health council may use the moneys to increase the number of veterinarians participating in the loan repayment program.

**SECTION 5. AMENDMENT.** Section 43-29.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**43-29.1-08. Gifts, grants, and donations - Continuing appropriation.**

1. The state health council may accept any conditional or unconditional gifts, grants, ~~or~~ and donations for the purpose of providing ~~funds~~ moneys for the repayment of veterinarians' education loans. ~~However, if an entity desires to provide funds~~ moneys to the state health council ~~to allow an expansion of the program beyond the three veterinarians contemplated by this chapter for the location of a veterinarian in or at a specific site, the entity shall commit to fund fully the expansion~~ provide the full amount required under this program for a period of four years.
2. The state health council may contract with a public or private entity and may expend any moneys available to the council to obtain matching funds for the purposes of this chapter. ~~During the 2007-09 biennium, the state department~~

~~of health may receive no more than seven percent of the appropriated moneys and the state veterinarian may receive no more than three percent of the appropriated moneys for administration of the loan repayment program.~~

3. All moneys received as gifts, grants, or donations under this section are appropriated as on a continuing appropriation basis to the state health council for the purpose of providing funds for the repayment of additional veterinarians' education loans increasing the number of veterinarians participating in the loan repayment program under this chapter.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 322

### HOUSE BILL NO. 1433

(Representatives S. Meyer, Devlin, Koppelman, Kilichowski)  
(Senators Lyson, Nodland)

AN ACT to create and enact a new section to chapter 43-30 of the North Dakota Century Code, relating to regulation of investigative and security services; and to amend and reenact section 12-63-11 of the North Dakota Century Code, relating to licensure of peace officers.

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

**SECTION 1. AMENDMENT.** Section 12-63-11 of the North Dakota Century Code is amended and reenacted as follows:

##### **12-63-11. Renewal of license.**

1. A license expires three years from the date of its issuance and must be renewed in the manner prescribed by the board and on payment of a renewal fee and on a show of proof that the individual has met the requirements established by the board for continuing education. The board may provide for the late renewal of a license on payment of a late fee, but a late renewal of a license may not be granted more than one year after expiration of the license.
2. On request, the board shall grant inactive status to a licensee who does not perform the duties of a peace officer or is no longer employed by a criminal justice agency. A licensee may retain inactive status indefinitely if the licensee maintains continuing education requirements and renews the license in accordance with board requirements. A licensee on inactive status shall meet the same qualifications, testing, and insurance requirements as are required by law and rule for a licensee on active status.

**SECTION 2.** A new section to chapter 43-30 of the North Dakota Century Code is created and enacted as follows:

##### **Peace officers.**

Notwithstanding section 12.1-13-04, the board may issue a license to an individual who is a peace officer if the license issued to that peace officer under chapter 12-63 is on inactive status.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 323

### SENATE BILL NO. 2164

(Senators Lyson, Sitte, Krebsbach)  
(Representatives Grande, Porter, Schatz)

AN ACT to amend and reenact sections 43-31-02, 43-31-07, and 43-31-16 of the North Dakota Century Code, relating to requirements for detection of deception instruments and examiners.

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

**SECTION 1. AMENDMENT.** Section 43-31-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-31-02. ~~Device or instrument~~ Instruments to be used.**

Every examiner shall use an instrument which records ~~permanently and simultaneously the subject's cardiovascular and respiratory patterns as minimum standards~~ physiologic activity with four sensors: a blood pressure cuff, electrodermal sensors, and two respirator sensors, but such an instrument may record additional physiological changes pertinent to the detection of deception. An examiner shall, ~~upon written request of a~~ when requested by the person being examined, ~~make known~~ provide the results of such test to the person examined ~~examination~~ within five ~~days of receipt of the written request~~ a reasonable amount of time.

**SECTION 2. AMENDMENT.** Section 43-31-07 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-31-07. Qualifications of applicant.**

A person is qualified to receive a license as an examiner:

1. Who is at least ~~eighteen~~ twenty-one years of age.
2. Who establishes that the person is a person of honesty, truthfulness, integrity, and moral fitness.
3. Who has not been convicted of an offense determined by the attorney general to have a direct bearing upon a person's ability to serve the public as an examiner, or who, following conviction of any offense, is determined, pursuant to section 12.1-33-02.1, to be rehabilitated, or who has not been released or discharged under other than honorable conditions from any of the armed services of the United States.
4. Who has passed ~~an examination a test~~ conducted by the attorney general, or under the attorney general's supervision, to determine the applicant's competency to obtain a license to practice as an examiner ~~except that an examiner who was continually engaged in the administration of examinations for the two-year period immediately prior to July 1, 1975, or who had successfully completed a training course prior to July 1, 1975, from a school deemed acceptable by the attorney general, and who was previously exempt~~



~~from the provisions of this chapter as an examiner in the exclusive employ of the state of North Dakota, a county, municipality, or political subdivision thereof as then provided by section 43-31-15 is exempt from the requirement of an examination.~~

5. Who has satisfactorily completed a polygraph examiners course approved by the attorney general and has satisfactorily completed not less than six months of internship training.

**SECTION 3. AMENDMENT.** Section 43-31-16 of the North Dakota Century Code is amended and reenacted as follows:

**43-31-16. ~~Examiner licensed in another state exempt from examination~~Exemption from testing requirements.**

~~An applicant who is an examiner, licensed under the laws of another state of the United States, may be issued a license without examination being tested by the attorney general, in the attorney general's discretion, upon payment of a fee of thirty five dollars, and the production of satisfactory proof if:~~

1. ~~That the~~The applicant is at least twenty-one years of age;
2. ~~That the~~The applicant is a citizen of the United States;
3. ~~That the~~The applicant is of good moral character; and
4. ~~That the requirements for the licensing of examiners in such particular state of the United States were at the date of licensing substantially equivalent to the requirements then in force in this state; and~~
5. ~~That the applicant had lawfully engaged in the administration of polygraph examinations under the laws of such state for at least two years prior to the application for license hereunder.~~The applicant:
  - a. Is licensed in a state that has substantially equivalent licensing requirements and grants reciprocity to examiners licensed in North Dakota; or
  - b. Is a North Dakota resident and has within the previous twelve months successfully completed a basic polygraph examiners course taught by an accredited school and approved by the attorney general.

Approved April 19, 2011  
Filed April 19, 2011

## CHAPTER 324

### SENATE BILL NO. 2155

(Senator J. Lee)

AN ACT to create and enact two new sections to chapter 43-32 of the North Dakota Century Code, relating to regulation of applied behavior analysts; and to amend and reenact sections 43-32-01, 43-32-08, 43-32-08.1, 43-32-08.2, 43-32-09, 43-32-12, 43-32-13, and 43-32-14, subsection 1 of section 43-32-16, and sections 43-32-19.1 and 43-32-30 of the North Dakota Century Code, relating to the regulation of applied behavior analysis by the state board of psychologist examiners.

#### 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. "Autism spectrum disorder" means a neurobiological medical condition that includes autistic disorder, Asperger's disorder, pervasive development disorder not otherwise specified, Rett's disorder, and childhood disintegrative disorder.
3. "Board" means the North Dakota state board of psychologist examiners.
- ~~2.4.~~ "Industrial-organizational psychologist" means an individual who is licensed under this chapter to engage in the practice of industrial-organizational psychology.
- ~~3.5.~~ "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.
- ~~4.6.~~ "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.
- ~~5.7.~~ "Licensee" means an industrial-organizational psychologist, an applied behavior analyst, or a psychologist.
- ~~6.8.~~ "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.

9. "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.

7-10. "Psychologist" means an individual who is licensed under this chapter in the practice of psychology.

8-11. "Psychology resident" means an individual who has met the requirement of subdivision b of subsection 1 of section 43-32-20, is involved in supervised psychological employment, and has registered with the board.

9-12. "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 licensed psychologist or applied behavior analyst. The term does not include an applied behavior analyst.

13. "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 43-32-08 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; 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. The educational program rules for industrial-organizational psychologists must take into account the availability of professionally accredited programs in the field of industrial-organizational psychology.

**SECTION 3. 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 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. Applicants for accreditation of continuing education courses, classes, or activities may be charged a reasonable fee determined by the board.

**SECTION 4. 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 5. 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 6. AMENDMENT.** Section 43-32-12 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-12. Application and license fee for licensure and registration.**

The board shall adopt rules establishing the amount of the application fee for licensure and registration by written and oral examination and by reciprocity. A fee is not refundable, in whole or in part, except for failure of the board to hold examinations at the time originally announced, in which event the entire fee must be refunded upon demand by the applicant.

**SECTION 7. 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.**

Before January first of each year, every licensee and registrant shall pay to the secretary of the board an annual ~~license~~ fee determined by the board not to exceed one hundred fifty dollars. The secretary of the board, upon receipt of payment of the annual ~~license~~ fee, shall issue the licensee or registrant a certificate of annual ~~license renewal~~. 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 ~~license~~ 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 a renewal notice to each licensee and registrant at the address on file with the board.

**SECTION 8. AMENDMENT.** Section 43-32-14 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-14. Payment of delinquent ~~license fees~~ annual fee - Reinstatement.**

An individual whose license or registration issued under this chapter was revoked for failure to pay the annual ~~license~~ fee must be reinstated and the license or registration renewed if, within one year from the date of revocation, the individual pays to the secretary of the board the amount of the annual ~~license~~ fees in default and a late fee in the amount of twenty dollars.

**SECTION 9. AMENDMENT.** Subsection 1 of section 43-32-16 of the North Dakota Century Code is amended and reenacted as follows:

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, age, 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.

**SECTION 10. AMENDMENT.** Section 43-32-19.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-19.1. Licensing applicant licensed in other jurisdictions.**

1. The board may grant a license to an applicant, licensed in good standing in another jurisdiction, who passes the oral examination on the law and rules regulating the practice of psychology ~~and~~, industrial-organizational psychology, or applied behavior analysis and meets one of the following requirements:
  4. a. The applicant is licensed in a jurisdiction that imposes requirements for licensure which are at least as stringent as the requirements imposed in this state.
  2. b. The applicant holds a certificate of professional qualification in psychology issued by the association of state and provincial psychology boards or its successor.
2. The board shall grant a provisional license or registration to an applicant to be an applied behavior analyst or registered applied behavior analyst while the application is pending, provided the applicant is:
  - a. Licensed or registered and is in good standing in another jurisdiction; or
  - b. Certified in good standing with the national behavior analyst certification board.

**SECTION 11. 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 ~~or~~, industrial-organizational psychologist, or applied behavior analyst. The student or intern ~~shall~~may not use the title "psychologist" ~~or~~, "industrial-organizational psychologist", "licensed behavior analyst", or "registered applied behavior analyst" and the student or intern status ~~shall~~must be clearly stated.
2. A nonresident licensed, registered, or certified in the state of the individual's residence who does not practice psychology ~~or~~, industrial-organizational psychology, or applied behavior analysis in this state for a period of more than thirty days in any calendar year.
3. 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.

4. 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 superintendent of public instruction.
5. A person 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 profession. A person claiming an exemption under this subsection may not represent to be rendering psychological or applied behavior analysis services.
6. An applicant licensed to practice psychology or industrial-organizational psychology in another jurisdiction, pending disposition of the applicant's application in this state, if the applicant notifies the board on a form provided by the board of the applicant's intent to practice pending disposition of the application and the applicant adheres to the requirements of this chapter and the rules adopted by the board.
7. A person employed by an agency, a nonprofit corporation, or an institution if that person is currently exempt from licensure. A person exempt under this subsection continues to be exempt if the person continues employment in the same position with the agency, nonprofit corporation, or institution that applied for and received the exemption.
8. An individual providing applied behavior analysis services to an individual in a public school setting.
9. An individual providing applied behavior analysis services to an individual served by a public or private service agency licensed by the state to provide residential, habilitative, vocational, or social support services as defined by the board when performed as part of an individual support plan supervised by a professional employee meeting the requirements of that agency's licensure standards, provided the professional employee does not represent to the public as a registrant or an applied behavior analyst.
10. 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.
11. An individual licensed as an occupational therapist or an occupational therapy assistant pursuant to chapter 43-30 within the body of knowledge and scope of professional practice of occupational therapy.

**SECTION 12.** A new section to chapter 43-32 of the North Dakota Century Code is created and enacted as follows:

**Applied behavior analysis - Licensure or registration required - Titles.**

Unless a registrant, an applied behavior analyst, or a psychologist, a person may not:

1. Engage in the practice of applied behavior analysis or render services designated as applied behavior analysis or hold out as a practitioner of applied behavior analysis in this state; or
2. Use the title "licensed applied behavior analyst" or "registered applied behavior analyst" or any title that is substantially the same unless licensed or registered by the board under this chapter.

**SECTION 13.** A new section to chapter 43-32 of the North Dakota Century Code is created and enacted as follows:

**Applied behavior analysis - Renewal - Fees.**

1. The board shall issue a license or registration to each applicant who files an application for registration as a registered applied behavior analyst or for licensure as an applied behavior analyst upon a form and in a manner the board prescribes; submits the required fee established by the board; and demonstrates the applicant meets the requirements of subsection 2.
2. An applicant under this section shall demonstrate the applicant:
  - a. Has met board-approved education requirements, such as the education requirements of the board-certified behavior analyst standards;
  - b. Has passed a board-approved demonstration of professional competence, such as a standardized examination specific to the profession such as the board-certified behavior analyst examination;
  - c. Is credentialed as a behavior analyst by a board-approved credentialing entity, such as the behavior analyst certification board; and
  - d. Has established supervision requirements as determined by the board for practice when applying as a registered applied behavior analyst.
3. The board may withhold, deny, revoke, or suspend a license or registration for applied behavior analyst applied for or issued under this chapter and otherwise may discipline a license or registration holder or applicant in the same manner provided under section 43-32-27.
4. A complaint regarding or board investigation of a licensed or registered applied behavior analyst is filed or conducted in the same manner as provided under section 43-32-27.1.
5. If an individual employed in the state on August 1, 2011, in the practice of applied behavior analysis submits to the board a written request before January 1, 2013, the required license or registration application fee, and a written statement from the applicant's employer that the applicant's employment remains satisfactory, the board shall issue to that applicant:



- a. A license as an applied behavior analyst if the applicant is employed in a position granted license exemption by the board and submits a letter of endorsement from the licensed psychologist supervisor.
- b. A license as an applied behavior analyst if the applicant has a master's degree in psychology and is employed as a behavior analyst as verified in writing by the applicant's employer. Acceptable work titles for an applicant under this subdivision include behavior analyst, behavior interventionist, and behavior modification specialist.
- c. Registration as an applied behavior analyst if the applicant has a bachelor's degree; provides a board-approved plan of supervision from a licensed psychologist or applied behavior analyst; and is employed as a behavior analyst as verified in writing by the applicant's employer. Acceptable work titles for an applicant under this subdivision include behavior analyst, behavior interventionist, and behavior modification specialist.

Approved April 26, 2011

Filed April 26, 2011

## CHAPTER 325

### SENATE BILL NO. 2101

(Natural Resources Committee)

(At the request of the State Board of Water Well Contractors)

AN ACT to amend and reenact subsection 5 of section 43-35-13 and section 43-35-17 of the North Dakota Century Code, relating to fees to obtain and renew a water well contractor certificate; and to repeal sections 43-35-15, 43-35-15.1, 43-35-15.2, and 43-35-15.3 of the North Dakota Century Code, relating to water well monitoring certification.

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

**SECTION 1. AMENDMENT.** Subsection 5 of section 43-35-13 of the North Dakota Century Code is amended and reenacted as follows:

5. A person applying to take a certification examination shall pay to the board treasurer a nonrefundable examination fee in the amount of ~~ten~~ one hundred dollars. If upon examination the applicant is found to be qualified as a water well contractor, a water well pump and pitless unit installer, a monitoring well contractor, or a geothermal system driller, the board shall issue to that person an appropriate certificate upon the applicant's executing and filing with the board a bond as required in this chapter. The board may offer a combined examination for certification of a person as a water well contractor and a water well pump and pitless unit installer and may issue a single certificate for successful completion of the combined examination. Certificates issued under this chapter are not transferable.

**SECTION 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.**

A certificate issued under this chapter is valid for up to one year and expires on the thirty-first day of December in the year of issuance. The certificate may be renewed by the board upon application. Every two years the application must include reporting information that the applicant completed six hours of continuing education during the two-year reporting cycle which meets continuing education standards adopted by the board. The application must be made before April first in the year following the certificate's expiration, must be accompanied by a fee in an amount set by the board not to exceed ~~fifty~~ two hundred dollars, and must be accompanied by a bond as provided in section 43-35-14.

**SECTION 3. REPEAL.** Sections 43-35-15, 43-35-15.1, 43-35-15.2, and 43-35-15.3 of the North Dakota Century Code are repealed.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 326

### SENATE BILL NO. 2115

(Human Services Committee)  
(At the request of the Board of Examiners on Audiology  
and Speech-Language Pathology)

AN ACT to amend and reenact subsection 7 of section 43-37-02, sections 43-37-03, 43-37-04, 43-37-05, 43-37-06, 43-37-08, and 43-37-09, and subsection 1 of section 43-37-13 of the North Dakota Century Code, relating to the practice, licensing, and disciplining of audiologists and speech-language pathologists and the composition, powers, and compensation of the board of examiners on audiology and speech-language pathology.

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

**SECTION 1. AMENDMENT.** Subsection 7 of section 43-37-02 of the North Dakota Century Code is amended and reenacted as follows:

7. "Speech-language pathology" means the application of principles, methods, and procedures for measurement, testing, evaluation, identification, prediction, counseling, or instruction related to the development and disorders of speech and language, including voice, rhythm, and articulation, ~~cognitive-communication, swallowing, and augmentative alternative communication~~ for the purpose of identifying, evaluating, preventing, managing, habilitating or rehabilitating, ameliorating, or modifying such disorders and conditions in individuals or groups of individuals.

**SECTION 2. AMENDMENT.** Section 43-37-03 of the North Dakota Century Code is amended and reenacted as follows:

#### **43-37-03. License required - Exceptions.**

A person may not practice or represent that the person is an audiologist or speech-language pathologist in this state unless licensed annually in accordance with this chapter. However, this chapter does not prevent or restrict:

1. A physician or surgeon from engaging in the practice of medicine in this state.
2. A hearing aid specialist from engaging in testing of hearing and other practices and procedures used solely for the fitting and selling of hearing aids in this state as provided in chapter 43-33.
3. Any person licensed in this state by any other law from engaging in the profession or occupation for which licensed.
4. A person who holds a valid credential as a speech-language pathologist or teacher of the hearing-impaired, issued by the department of public instruction, or a person employed as an audiologist or speech-language pathologist by the government of the United States, if such person performs speech-language pathology or audiology services solely within the confines or under the jurisdiction of the governmental or state educational organization by

which employed. However, such person may, without obtaining a license under this chapter, consult with or disseminate that person's research findings and other scientific information to speech-language pathologists or audiologists outside the jurisdiction of the organization by which that person is employed.

5. The activities and services of a person pursuing a course of study leading to a degree in speech-language pathology or audiology at a college or university if such activities and services constitute a part of a supervised course of study and such person is designated audiology or speech-language pathology intern, audiology or speech-language pathology trainee, or by any other such titles clearly indicating the training status appropriate to the level of training.
6. The activities and services of persons fulfilling the requirements of subsection 3 of section 43-37-04.
7. The performance of audiology or speech-language pathology services in this state by any person not a resident of this state who is not licensed under this chapter if such services are performed for no more than five days in any calendar year and in cooperation with an audiologist or speech-language pathologist licensed under this chapter.
8. Any person holding a valid credential as a teacher of the hearing-impaired issued by the council on education of the deaf from engaging in the practice of habilitation and rehabilitation of hearing-impaired persons.
- ~~9. No speech pathologist or audiologist licensed pursuant to this chapter may receive any remuneration of any kind from the sale of any type of hearing aid unless the speech pathologist or audiologist is licensed as provided in chapter 43-33.~~
- ~~10.~~ Any person possessing a valid certificate as a certified audiometric technician recognized by the state board as meeting council for accreditation in occupational hearing conservation standards appendix II or its equivalent from providing audiometric testing if such service is performed in cooperation with either an audiologist licensed under this chapter or a licensed physician.
- ~~11.~~ 10. Any person providing hearing screening services as part of a public service project solely intended for the purposes of identification of hearing impairment if such services are performed in cooperation with an audiologist licensed under this chapter who is directly responsible for:
  - a. The training of said person;
  - b. The administration of hearing screening procedures;
  - c. The interpretation of testing results; and
  - d. Assuring appropriate referral and followup of the identified population.

**SECTION 3. AMENDMENT.** Section 43-37-04 of the North Dakota Century Code is amended and reenacted as follows:

**43-37-04. Eligibility for licensure.**

To be eligible for licensure by the board as an audiologist or speech-language pathologist, ~~a person~~ an applicant shall meet all the following requirements:

1. Be of good moral character.
2. Possess ~~at least a master's an appropriate degree or its equivalent in the area of speech-language pathology or audiology~~ from an educational institution recognized by the board.
  - a. An applicant for a speech-language pathologist license shall possess at least a master's degree in speech-language pathology.
  - b. An applicant for an audiologist license shall possess at least a master's or a doctorate degree in audiology.
3. Submit evidence showing qualifications prescribed by rules of the board.
4. Pass an examination approved by the board ~~and pay the prescribed fee~~ within one year of application. The board may waive the examination requirement if the applicant presents proof of licensure in another state which has professional standards equivalent to those required by the board.
5. Pay the prescribed fee.

**SECTION 4. AMENDMENT.** Section 43-37-05 of the North Dakota Century Code is amended and reenacted as follows:

**43-37-05. Board of examiners on audiology and speech-language pathology.**

1. The board of examiners on audiology and speech-language pathology is hereby established.
2. The board must be composed of ~~seven~~ eight members appointed by the governor. Appointees must be residents of this state for at least one year immediately preceding their appointment and, except for the consumer member, must be engaged in rendering services to the public, in teaching, or in research in audiology or speech-language pathology for at least three years preceding their appointment. Two board members must be audiologists, ~~two~~ three must be speech-language pathologists, one must be an otolaryngologist, one must be a hearing aid specialist, and one must be a consumer.
3. Each board member shall hold office for three years and until a successor is appointed and qualified. The terms must be arranged so that no more than ~~three~~ four terms expire on July first of each year. The governor shall fill vacancies for an unexpired term. No person may serve more than two successive terms.
4. The board shall meet at least twice each calendar year. Special meetings may be convened at the call of the chairman or at the written request of any three board members.

5. ~~Four~~<sup>Five</sup> members of the board constitute a quorum. When an application for licensure is received, one member of the quorum must be engaged in the profession for which a license is sought.

**SECTION 5. AMENDMENT.** Section 43-37-06 of the North Dakota Century Code is amended and reenacted as follows:

**43-37-06. Powers and duties of the board.**

The board, ~~pursuant to chapter 28-32,~~ may employ persons to assist the board in carrying out its duties under this chapter and adopt rules for:

1. Licensing.
2. Licensing fees not to exceed one hundred dollars per year.
3. Ethical standards of conduct.
4. Continuing competency and education.
5. ~~Grievances.~~
6. License suspension or revocation.
7. ~~Employee duties and conduct.~~
8. ~~Recordkeeping and fiscal control.~~
- 9-6. Carrying out the purposes of this chapter.

**SECTION 6. AMENDMENT.** Section 43-37-08 of the North Dakota Century Code is amended and reenacted as follows:

**43-37-08. Compensation of board members.**

Board members shall receive ~~no salary for their services, but~~compensation per day in the amount provided for members of the legislative management under section 54-35-10 and shall receive be reimbursed for mileage and travel expenses ~~for attendance at board meetings necessarily incurred in the conduct of board business at the same rate as state employees.~~

**SECTION 7. AMENDMENT.** Section 43-37-09 of the North Dakota Century Code is amended and reenacted as follows:

**43-37-09. License examination.**

1. A separate examination must be required for licensure in speech-language pathology or audiology. Any person may be licensed in both areas if that person meets the respective qualifications of each area.
2. The speech-language pathology examination and the audiology examination are ~~the national examinations as established offered by the American speech-language-hearing association organizations approved by the board.~~ The board shall maintain proof that all licensees have passed the required examination. The examination is not required for renewal of licenses except as required by board rules.

- ~~3. The board may issue a temporary license to practice activities regulated by this chapter to any person who furnishes satisfactory evidence of qualifications to the board. A temporary license may be issued for no longer than one year.~~

**SECTION 8. AMENDMENT.** Subsection 1 of section 43-37-13 of the North Dakota Century Code is amended and reenacted as follows:

1. The board may refuse to issue or renew a license, or may suspend or revoke, or take other disciplinary action against a license if the licensee or applicant for license has engaged in unprofessional conduct. Such unprofessional conduct may include:
  - a. Obtaining a license by means of fraud, misrepresentation, or concealment of material facts;
  - b. Engaging in unprofessional conduct, as defined by the rules established by the board, or violating the code of ethics adopted and published by the board;
  - c. Conviction of an offense if the acts for which that person is convicted are determined by the board to have a direct bearing on such applicant's or licensee's ability to serve the public in the capacity of a speech-language pathologist or audiologist; or the board determines that such applicant or licensee, following conviction of any other offense, is not sufficiently rehabilitated under section 12.1-33-02.1;
  - d. Violation of any order or rule adopted by the board;
  - e. Violation of this chapter.
  - f. Receiving remuneration of any kind from the sale of any type of hearing aid, unless licensed under chapter 43-33.

Approved April 20, 2011  
Filed April 20, 2011

## CHAPTER 327

### SENATE BILL NO. 2199

(Senators G. Lee, Berry, Fischer)  
(Representatives Grande, Hawken, Streyle)

AN ACT to create and enact a new subdivision to subsection 2 of section 12-60-24 and a new section to chapter 43-42 of the North Dakota Century Code, relating to criminal history record checks for individuals licensed by the state board of respiratory care.

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

<sup>118</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 state board of respiratory care for applicants, licensees, or investigations under chapter 43-42, except that criminal history record checks need not be made unless required by the board.

**SECTION 2.** A new section to chapter 43-42 of the North Dakota Century Code is created and enacted as follows:

#### **Criminal history record checks.**

The board may require any applicant or licensee under this chapter to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided by section 12-60-24. All costs associated with obtaining a criminal history record check are the responsibility of the applicant or licensee.

Approved April 25, 2011  
Filed April 25, 2011

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<sup>118</sup> Section 12-60-24 was also amended by section 1 of House Bill No. 1081, chapter 94, section 1 of Senate Bill No. 2097, chapter 328, and section 1 of Senate Bill No. 2114, chapter 512.



## CHAPTER 328

### SENATE BILL NO. 2097

(Human Services Committee)

(At the request of the Board of Counselor Examiners)

AN ACT to create and enact a new subdivision to subsection 2 of section 12-60-24 and a new section to chapter 43-47 of the North Dakota Century Code, relating to criminal history record checks of counselors; and to amend and reenact subsection 3 of section 43-47-03 of the North Dakota Century Code, relating to fees.

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

119 **SECTION 1.** A new subdivision to subsection 2 of section 12-60-24 of the North Dakota Century Code is created and enacted as follows:

The board of counselor examiners for applicants for licensure or licensees under chapter 43-47, except that criminal history record checks for licensees need not be made unless required by the board.

**SECTION 2. AMENDMENT.** Subsection 3 of section 43-47-03 of the North Dakota Century Code is amended and reenacted as follows:

3. Set, by rule, and collect a fee, ~~not to exceed one hundred fifty dollars,~~ for the filing of each application for a license under this chapter and set, by rule, and collect a fee, ~~not to exceed one hundred dollars,~~ for the renewal of a license under this chapter.

**SECTION 3.** A new section to chapter 43-47 of the North Dakota Century Code is created and enacted as follows:

#### **Criminal history record checks.**

The board shall require an applicant for licensure under subsections 2, 3, and 4 of section 43-47-06 and section 43-47-06.1 to submit to a statewide and nationwide criminal history record check and may require a licensee to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided in section 12-60-24. All costs associated with obtaining a background check are the responsibility of the applicant or licensee.

Approved April 25, 2011

Filed April 25, 2011

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<sup>119</sup> Section 12-60-24 was also amended by section 1 of House Bill No. 1081, chapter 94, section 1 of Senate Bill No. 2114, chapter 512, and section 1 of Senate Bill No. 2199, chapter 327.

## CHAPTER 329

### HOUSE BILL NO. 1376

(Representatives Monson, Damschen)  
(Senator Olafson)

AN ACT to amend and reenact sections 43-49-07, 43-49-09, and 43-49-11 of the North Dakota Century Code, relating to licensure of reflexologists.

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

**SECTION 1. AMENDMENT.** Section 43-49-07 of the North Dakota Century Code is amended and reenacted as follows:

**43-49-07. Reciprocity Qualification for licensure by an applicant licensed in another jurisdiction.**

Notwithstanding the requirements in section 43-49-06 for the issuance of a license, the board shall license an individual ~~from who applies for licensure to work in this state if the applicant is licensed as a reflexologist by another state who, applies for licensure, pays the applicable fee, meets or exceeds the requirements for licensure set by the board, and who has no imposed or pending disciplinary actions.~~ who applies for licensure to work in this state if the applicant is licensed as a reflexologist by another state who, applies for licensure, pays the applicable fee, meets or exceeds the requirements for licensure set by the board, and who has no imposed or pending disciplinary actions.

**SECTION 2. AMENDMENT.** Section 43-49-09 of the North Dakota Century Code is amended and reenacted as follows:

**43-49-09. License - Display - Renewal - Renewal fee.**

Each license must be conspicuously displayed at the place of practice. A license must be recorded within thirty days after issuance in the office of the recorder, unless the board of county commissioners designates a different official, in any county where the reflexologist practices.

A license must be renewed before June first of each year. The secretary-treasurer of the board shall mail notice of renewal to each licensed reflexologist's address as shown in the records of the board at least thirty days before the expiration of the license. The notice must include any requests for information necessary for renewal. The licensed reflexologist may renew a license by sending a renewal fee of ~~twenty five dollars, or an~~ amount set by the board, not to exceed one hundred dollars, to the secretary-treasurer of the board, and submitting proof that the reflexologist has attended a seminar on reflexology at least once during the preceding three years. A license that is not renewed by June thirtieth lapses.

**SECTION 3. AMENDMENT.** Section 43-49-11 of the North Dakota Century Code is amended and reenacted as follows:

**43-49-11. Prohibited practices.**

~~A reflexologist may not use lotions, creams, or mechanical devices in the application of reflexology. A reflexologist may not diagnose or treat for specific diseases, practice spinal or other joint manipulations, or prescribe or adjust prescription medication, and prescribe or administer vitamins.~~

Approved April 8, 2011

Filed April 11, 2011

## CHAPTER 330

### SENATE BILL NO. 2185

(Senators Oehlke, Burckhard, Robinson)  
(Representatives Mock, Hofstad)

AN ACT to create a new section to chapter 43-52 of the North Dakota Century Code, relating to the regulation of sign language interpreters; to amend and reenact sections 43-52-01, 43-52-02, and 43-52-03 of the North Dakota Century Code, relating to regulation of sign language interpreters; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 43-52-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-52-01. Definitions.**

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

1. "Consumer" means an individual who is deaf, deaf-blind, speech-impaired, hard-of-hearing, or who requires special communication techniques in order to communicate.
2. "Interpreter" means an individual who engages in the practice of interpreting.
3. "Interpreting" means the translating or transliterating of English concepts to any necessary specialized vocabulary used by a consumer or translating of a consumer's specialized vocabulary to English concepts. Necessary specialized vocabularies include American sign language, English-based sign language, and oral interpreting.
4. "Nationally recognized certification" means certification granted by a national organization that is based on a skills assessment of the applicant. These organizations include the registry of interpreters for the deaf and the national association of the deaf.
5. "Video remote interpreting" is a process that allows an individual who is deaf or hard-of-hearing to communicate with a hearing individual at the same location through an interpreter displayed via videoconferencing equipment or through a television with a videophone.

**SECTION 2. AMENDMENT.** Section 43-52-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-52-02. Practice of interpreting.**

An individual may not practice or represent as an interpreter for deaf, deaf-blind, speech-impaired, or hard-of-hearing individuals in the state unless the individual holds a valid nationally recognized certification. ~~However, an individual who was practicing as an interpreter in this state before August 1, 2001, has until July 31, 2003, to meet the certification requirement under this section.~~ A person may not

provide video remote interpreting services in this state unless the person is an individual who holds a valid nationally recognized certification.

**SECTION 3. AMENDMENT.** Section 43-52-03 of the North Dakota Century Code is amended and reenacted as follows:

**43-52-03. Exceptions.**

This chapter does not prevent or restrict:

1. A nonresident interpreter working in this state not more than nineteen days per year.
2. An interpreter working at a religious activity.
3. An interpreter working as a volunteer without compensation.
4. An interpreter working in an emergency. An emergency is a situation in which the consumer decides that the length of time needed to obtain a ~~licensed~~certified interpreter is likely to cause injury or loss to the consumer.
5. The activities and services of an interpreter intern or student-in-training enrolled in a program of study in interpreting at an accredited institution of higher learning; interpreting under the supervision of a ~~licensed~~certified interpreter as part of a supervised program; and identified as an interpreter intern or student-in-training.
6. An individual using sign language or a manual communication system as a means of communication with or on behalf of a family member, a deaf individual, a deaf-blind individual, a speech-impaired individual, or hard-of-hearing individual who has specifically requested that use by that individual.
7. A communication made as a reasonable accommodation for the employment of a deaf, deaf-blind, speech-impaired, or hard-of-hearing individual.
8. A communication with a deaf, deaf-blind, speech-impaired, or hard-of-hearing individual who could not communicate using American sign language or English-based sign language.
9. An individual working in an elementary or secondary school who has ~~successfully completed a three-year educational interpreter certificate program of study or who has passed the educational interpreter performance assessment at a level of 3.5 or higher. The individual may work in the school setting without national certification until August 1, 2005, if the individual is being mentored by a trained mentor who is either a certified interpreter or a deaf adult. To continue working in the school setting after August 1, 2005, the individual must have obtained national certification.~~
10. An individual who has successfully completed an accredited interpreter training program from interpreting without certification for a period of up to two years from the date of completion of the program if, during that period, the individual is mentored by a trained mentor who is either a certified interpreter or a deaf adult.

**SECTION 4.** A new section to chapter 43-52 of the North Dakota Century Code is created and enacted as follows:

**Penalty - Civil penalty.**

Any person who violates this chapter is guilty of a class B misdemeanor. In addition to the criminal penalties provided, the civil remedy of injunction is available to restrain and enjoin a violation of this chapter without proof of actual damages sustained by any person.

Approved April 26, 2011  
Filed April 26, 2011

## CHAPTER 331

### SENATE BILL NO. 2271

(Senators Sitte, Christmann, Mathern)  
(Representatives Hofstad, R. Kelsch, J. Kelsh)

AN ACT to create and enact a new subsection to section 43-17-02 and chapters 43-57, 43-58, and 43-59 of the North Dakota Century Code, relating to creation of the state board of integrative health, regulation of naturopaths, and regulation of music therapists; to amend and reenact section 43-17-41 of the North Dakota Century Code, relating to duties of naturopaths; to provide a penalty; to provide an appropriation; and to provide for application.

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

**SECTION 1.** A new subsection to section 43-17-02 of the North Dakota Century Code is created and enacted as follows:

A naturopath duly licensed to practice in this state pursuant to the statutes regulating such profession.

**SECTION 2. AMENDMENT.** Section 43-17-41 of the North Dakota Century Code is amended and reenacted as follows:

#### **43-17-41. Duty of physicians and others to report injury - Penalty.**

1. Any physician, physician assistant, naturopath licensed under chapter 43-58, or any individual licensed under chapter 43-12.1 who performs any diagnosis or treatment for any individual suffering from any wound, injury, or other physical trauma:
  - a. Inflicted by the individual's own act or by the act of another by means of a knife, gun, or pistol shall as soon as practicable report the wound, injury, or trauma to a law enforcement agency in the county in which the care was rendered; or
  - b. Which the individual performing diagnosis or treatment has reasonable cause to suspect was inflicted in violation of any criminal law of this state, shall as soon as practicable report the wound, injury, or trauma to a law enforcement agency in the county in which the care was rendered.
2. The report under subsection 1 must state the name of the injured individual and the character and extent of the individual's injuries.
3. When a report of domestic violence, as defined in section 14-07.1-01, or a report of physical injury resulting from a sexual offense, as defined in chapter 12.1-20, is made to a law enforcement agency as required by this section, the injured individual must be provided with information regarding a domestic violence sexual assault organization as defined in section 14-07.1-01 or other victims' assistance program by the physician, physician assistant, naturopath, or any individual licensed under chapter 43-12.1, unless it is known that the information has previously been provided to the injured individual.

4. The reports mandated by this section must be made as soon as practicable and may be either oral or in writing. Oral reports must be followed by written reports within forty-eight hours if so requested by the sheriff or state's attorney to whom the oral report is originally made.
5. Any individual required to report as provided by this section who willfully fails to do so is guilty of an infraction.
6. Any individual making or not making a report in good faith pursuant to this section is immune from liability for making or not making a report.

**SECTION 3.** Chapter 43-57 of the North Dakota Century Code is created and enacted 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 or 43-59.

**43-57-02. Board - Qualifications - Appointment - Term of office - Compensation.**

1. The governor shall appoint the state board of integrative health care, which must consist of at least five members. Each profession regulated by the board must have one member on the board representing that profession. In addition, one member must be a doctor of medicine or osteopathy, one member must be a pharmacist, one member must be an advanced practice registered nurse, and at least one but no more than two members must be laypersons. If a doctor of medicine or osteopathy is not willing and able to serve, the governor may appoint an advanced practice registered nurse to fill this position. A board member must be a resident of this state. The professional members must be licensed to practice in this state, except the initial appointment for a newly regulated profession, who must be eligible for licensure. The layperson must be at least twenty-one years of age and may not be affiliated with any organization or profession that represents, provides, or regulates health care.
2. The term of office of each board member is three years with appointments distributed evenly from year to year. A member may not serve more than two consecutive full 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 is entitled to receive expenses as provided in section 54-06-09 and per diem as must be fixed by the board.
5. Annually, board members shall elect a chairman to preside at meetings of the board and a vice chairman to preside at meetings of the board in the chairman's absence.

**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 and 43-59;
  - b. That specify the scope of practice, which must be consistent with the required education for each profession regulated by the board;
  - c. That endorse equivalent licensure examinations of another state or foreign country and which may include licensure by reciprocity;
  - d. That establish educational standards for each profession regulated by the board as appropriate; and
  - e. 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 43-58, and chapter 43-59 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.

**43-57-04. Board duties in regulating professions - Subgroups.**

1. The board shall establish a subgroup for each profession regulated by the board. The board shall appoint at least three and no more than five members of the profession to serve as volunteer members of the subgroup. A subgroup member must be a licensed member of the profession, except in the case of a newly regulated profession in which case each subgroup member must be eligible for licensure. The board may appoint a board member to serve on a subgroup representing that board member's profession. The subgroup members serve at the pleasure of the board.



2. A subgroup established under this section shall serve in an advisory capacity to advise the board when requested by the board. The subgroup on its own motion may advise the board as the subgroup determines necessary.
3. The board may not take any action that impacts a profession regulated by the board as a whole or which impacts one or more licensees of that profession unless the board first consults with and requests the recommendation of the appropriate subgroup. If the board takes an action that is contrary to a subgroup's recommendation, the board shall articulate in writing why the subgroup's recommendation was not followed.

**43-57-05. Petition to the board - Inclusion as a board-regulated profession - Consideration of additional health care professions.**

1. An existing occupational or professional board of this state or agency of this state which regulates the practice of a health profession or a representative of a health profession that is not regulated by this state may submit to the board a petition and proposed bill draft requesting inclusion of that health profession as a profession regulated by the board. Upon receipt of a petition and proposed bill draft submitted under this section, the board shall review the petition and may work with the person submitting the petition to provide assistance in accomplishing this requested inclusion.
2. If a committee of the legislative assembly considers a measure to regulate a health care profession with fewer than fifty likely members, the committee shall consider whether it is desirable and feasible to have the state board of integrative health, some other existing board, or an existing state agency regulate that profession rather than create a new board.
3. If the membership of a board-regulated profession increases to at least one hundred licensees, the board may introduce legislation creating an independent board to regulate that profession.

**43-57-06. Issuance of license.**

If the board determines that an applicant possesses the qualifications required under this chapter and under chapter 43-58 or 43-59, the board shall issue a license to the applicant.

**43-57-07. License renewal - Continuing education.**

1. A license is effective when granted by the board.
2. A license expires on December thirty-first of every odd-numbered year.
3. A license may be renewed by payment of the renewal fee and completion of any continuing education requirements set by the board, provided the applicant's license is not currently revoked or grounds for denial do not exist.
4. If the application for renewal is not received on or before the expiration date, the license expires and the individual may not practice until a new application is made and a license is granted by the board.
5. At the time of renewal, the board shall require each applicant to present satisfactory evidence that the applicant has completed any 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 any 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.

#### **43-57-08. Discipline.**

1. The board may take disciplinary action against a licensee by any of the following means:
  - a. Revocation of license;
  - b. Suspension of license;
  - c. Probation;
  - d. Imposition of stipulations, limitations, or conditions relating to the licensee's practice;
  - e. Letter of censure;
  - f. Require the licensee to provide free public or charitable service for a defined period; and
  - g. Impose fines, not to exceed five thousand dollars for any single disciplinary action. Any fines collected by the board must be deposited in the state general fund.
2. Disciplinary action may be imposed against a licensee upon any of the following grounds:
  - a. The use of any false, fraudulent, or forged statement or document, or the use of any fraudulent, deceitful, dishonest, or immoral practice, in connection with any of the licensing requirements.
  - b. The making of false or misleading statements about the licensee's skill or the efficacy of any medicine, treatment, or remedy.
  - c. The conviction of any misdemeanor determined by the board to have a direct bearing upon the licensee's ability to serve the public or any felony. A license may not be withheld contrary to the provisions of chapter 12.1-33.
  - d. Habitual use of alcohol or drugs.
  - e. Physical or mental disability materially affecting the ability to perform the duties of the profession in a competent manner.
  - f. The performance of any dishonorable, unethical, or unprofessional conduct likely to deceive, defraud, or harm the public.
  - g. Obtaining any fee by fraud, deceit, or misrepresentation.

- h. Aiding or abetting the practice of the profession by an unlicensed, incompetent, or impaired person.
- i. The violation of any provision of the rules of the board, or any action, stipulation, condition, or agreement imposed by the board.
- j. The practice of the profession under a false or assumed name.
- k. The advertising for the practice of the profession in an untrue or deceptive manner.
- l. The representation to a patient that a manifestly incurable condition, sickness, disease, or injury can be cured.
- m. The willful or negligent violation of the confidentiality between licensee and patient, except as required by law.
- n. Gross negligence in the practice of the profession.
- o. Sexual abuse, misconduct, or exploitation related to the licensee's practice of the profession.
- p. A continued pattern of inappropriate care.
- q. The imposition by another state or jurisdiction of disciplinary action against a license or other authorization to practice based upon acts or conduct by the licensee which would constitute grounds for disciplinary action as set forth in this section. A certified copy of the record of the action taken by the other state or jurisdiction is conclusive evidence of that action.
- r. The lack of appropriate documentation in medical records for diagnosis, testing, and treatment of patients.

#### **43-57-09. Disciplinary proceedings - Appeals.**

1. Upon the filing of a written and signed complaint that alleges that a licensee practicing in this state has engaged in conduct identified as grounds for disciplinary action under this chapter, and which sets forth information upon which a reasonable and prudent person might believe that further inquiry should be made, the board shall cause the matter to be investigated.
2. The board may investigate a complaint on the board's own motion, without requiring the identity of the complainant to be made a matter of public record, if the board concludes that good cause exists for preserving the anonymity of the complainant.
3. If the investigation reveals no grounds to support the complaint, the board, three years following the date on which the complaint was filed, shall expunge the complaint from the licensee's individual record in the board's office.
4. If the investigation reveals grounds to support the complaint, the board shall initiate a disciplinary action by serving upon the licensee a notice of disciplinary action setting forth the allegations upon which the action is based, as well as a specification of the issues to be considered and determined.

5. If a written response contesting the allegations is not received by the board within twenty days of the date that the notice of disciplinary action was received or refused, the allegations may be deemed admitted and disciplinary sanctions deemed appropriate by the board must be imposed.
6. The board may at any time enter an informal resolution to resolve the complaint or disciplinary action.
7. An appeal from the board's final decision may be taken in accordance with chapter 28-32.

#### **43-57-10. Disciplinary proceedings - Cost of prosecution.**

In any order or decision issued by the board in resolution of a disciplinary proceeding in which disciplinary action is imposed against a licensee, the board may direct the licensee to pay the board a sum not to exceed the reasonable and actual costs, including reasonable attorney's fees, incurred by the board in the investigation and prosecution of the case. When applicable, the licensee's license may be suspended until the costs are paid to the board. A licensee 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 administrative law judge is final. The administrative hearing must occur before the licensee's license may be suspended for nonpayment.

#### **43-57-11. Enforcement - Penalty.**

A person that violates this chapter, chapter 43-58, or chapter 43-59 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, chapter 43-58, or chapter 43-59 without proof of actual damages sustained by any person.

**SECTION 4.** Chapter 43-58 of the North Dakota Century Code is created and enacted as follows:

#### **43-58-01. Definitions.**

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

1. "Approved naturopathic medical college" means a college and program granting the degree of doctor of naturopathy or naturopathic medicine which must require as a minimum a four-year, full-time resident program of academic and clinical study and which:
  - a. Is accredited, or has the status of candidate for accreditation, by an organization approved by the board, such as the council on naturopathic medical education; or
  - b. Has been approved by the board after an investigation that determines that the college or program meets education standards equivalent to those established by the accrediting agency under subdivision a and complies with the board's rules.
2. "Board" means the state board of integrative health care created under chapter 43-57.

3. "Homeopathic preparations" means nonprescriptive substances prepared according to the official homeopathic pharmacopoeia of the United States. The term does not include prescriptive drugs.
4. "Licensee" means an individual licensed by the board under this chapter.
5. "Naturopath" means an individual licensed to practice naturopathic health care under this chapter.
6. "Naturopathic health care", "naturopathic medicine", or "naturopathy" means a system of primary health care practiced by naturopaths for the prevention, diagnosis, and treatment of human health conditions, injury, and disease. The purpose of naturopathic health care, naturopathic medicine, or naturopathy is to promote or restore health by the support and stimulation of the individual's inherent self-healing processes. This is accomplished through education of the patient by a naturopath and through the use of natural therapies and therapeutic substances.
7. "Naturopathic physical application" means the therapeutic use by a naturopath of the actions or devices of electrical muscle stimulation, galvanic, diathermy, ultrasound, ultraviolet light, hydrotherapy, and naturopathic manipulative therapy. The term does not include manipulation of the spine.

#### **43-58-02. Exemptions.**

Many of the therapies used by a naturopath, such as the use of nutritional supplements, herbs, foods, homeopathic preparations, and such physical forces as heat, cold, water, touch, and light, are not the exclusive privilege of naturopaths, and their use, practice, prescription, or administration by individuals not licensed to practice naturopathic medicine is not prohibited by this chapter. This chapter does not restrict or apply to the scope of practice of any other profession licensed, certified, or registered under the laws of this state.

#### **43-58-03. License required - Title restrictions.**

1. Effective January 1, 2012, a person may not practice naturopathy without a current naturopathic license issued by the board.
2. A naturopath may use the title "naturopath" or "doctor of naturopathic medicine" and the abbreviation "N.D." when used to reflect either of these titles. Effective January 1, 2012, a person that uses these terms or initials as identification without having received a naturopathic license under this chapter is engaging in the practice of naturopathy without a license.

#### **43-58-04. Qualifications for licensure.**

In order to obtain a license to practice naturopathic medicine in this state, an application must be made 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.

#### **43-58-05. Application for licensure.**

1. An applicant for naturopathic licensure shall file an application on forms provided by the board showing to the board's satisfaction that the applicant is of good moral character and satisfied all of the requirements of this chapter and chapter 43-57, including:

- a. Successful graduation of an approved naturopathic medical college;
  - b. Successful completion of an examination prescribed or endorsed by the board, such as part I and part II of the naturopathic physicians licensing examinations;
  - c. Physical, mental, and professional capability for the practice of naturopathic medicine in a manner acceptable to the board; and
  - d. 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 that the applicant possesses the necessary qualifications.

#### **43-58-06. Initial applications - Education and testing exception.**

Notwithstanding the education and examination requirements for licensure under subdivisions a and b of subsection 1 of section 43-58-05, if an applicant was a bona fide resident of the state from January 1, 2011, through December 31, 2011, was practicing naturopathic medicine in this state immediately preceding January 1, 2012, was required to apply for licensure under this chapter in order to continue that practice, and does not meet the educational or examination requirements or both, the board may issue a license or limited license to that applicant if, following an examination of the applicant's education and experience, the board determines the applicant has sufficient education and experience to prepare the applicant to practice naturopathic medicine.

#### **43-58-07. Licensure granted without examination to individuals licensed in other states.**

1. The board may issue a naturopathic license by endorsement to an applicant who has complied with licensure requirements and who has passed an examination given by a recognized certifying agency approved by the licensing agency if the board determines the examination was equivalent in every respect to the examination required under this chapter.
2. The board may enter reciprocal agreements with licensing agencies of other states providing for reciprocal waiver of further examination or any part of the examination.
3. If an applicant is exempt from the examination required under this chapter, the applicant shall comply with the other requirements for licensure. The board may adopt rules allowing for temporary and special licensure to be in effect during the interval between board meetings.

#### **43-58-08. Practice of naturopathic health care.**

1. A naturopath may practice naturopathic medicine as a limited practice of the healing arts as exempted under section 43-17-02. A naturopath may not:
  - a. Prescribe, dispense, or administer any prescription drug;

- b. Administer ionizing radioactive substances for therapeutic purposes;
  - c. Perform a surgical procedure; or
  - d. Claim to practice any licensed health care profession or system of treatment other than naturopathic medicine unless holding a separate license in that profession. A naturopath may not hold out to the public that the naturopath is a primary care provider.
2. A naturopath may prescribe and administer for preventive and therapeutic purposes a prescriptive device and the following nonprescriptive natural therapeutic substances, drugs, and therapies:
- a. Food, vitamins, minerals, dietary supplements, enzymes, botanical medicines, and homeopathic preparations;
  - b. Topical drugs, health care counseling, nutritional counseling and dietary therapy, naturopathic physical applications, and therapeutic devices; and
  - c. Barrier devices for contraception.
3. A naturopath may perform or order for diagnostic purposes a physical or orificial examination, ultrasound, phlebotomy, clinical laboratory test or examination, physiological function test, and any other noninvasive diagnostic procedure commonly used by physicians in general practice and as authorized by the board.

#### **43-58-09. Public health duties.**

A naturopath has the same powers and duties as a licensed physician with regard to public health laws, reportable diseases and conditions, communicable disease control and prevention, recording of vital statistics, health and physical examinations, and local boards of health, except that the authority and responsibility are limited to activities consistent with the scope of practice established under this chapter and chapter 43-57.

#### **43-58-10. Employment by hospitals.**

A hospital may employ a naturopath in the same manner as provided under section 43-17-42.

**SECTION 5.** Chapter 43-59 of the North Dakota Century Code is created and enacted as follows:

#### **43-59-01. Definitions.**

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

1. "Board" means the state board of integrative health care created under chapter 43-57.
2. "Licensee" means an individual licensed by the board under this chapter.
3. "Music therapist" is an individual who practices music therapy.

4. "Music therapy" is the specialized use of music and the materials of music to restore, maintain, and improve the following areas of functioning: cognitive, psychological, social or emotional, affective, physical, sensory or sensorimotor, motor, communicative, and physiological functioning. Techniques used in the practice of music therapy include the use of music to provide participatory individual and group experiences; musical improvisation; therapeutic development of verbal skills and nonverbal behavior; receptive music learning; lyric discussions; memory recall; music and imagery; self-expression through composition and songwriting; socialization and enhancement of self-esteem through music performance; relaxation to music, including stress and pain management; learning through music; cultural and spiritual expression; development of fine and gross motor skills through responses to rhythm; respiratory and speech improvements through sound production; sensory integration and stimulation; increased awareness of music for development of recreation and leisure interests; and interactive verbal techniques to help facilitate, elicit, or summarize the techniques listed in this subsection and build the therapeutic relationship.

#### **43-59-02. Music therapy - License required - Title restrictions - Exceptions.**

1. Effective August 1, 2012, a person may not hold out as practicing music therapy, hold out as being a music therapist, or use a title or other designation indicating the person is a music therapist in this state unless that person is an individual licensed under this chapter and chapter 43-57.
2. The licensure provisions of this chapter do not prevent or restrict the practice, services, or activities of any individual licensed in another profession or any individual supervised by a licensed professional from performing work incidental to the practice of that profession or occupation, if that individual does not represent the individual as a music therapist.

#### **43-59-03. Qualifications for licensure.**

1. In order to obtain a license to practice music therapy in this state, an application must be made 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.
2. An applicant for licensure to practice music therapy shall file an application on forms provided by the board showing to the board's satisfaction that the applicant is an individual of good moral character, is at least eighteen years of age, and satisfied all the requirements established by the board which may include:
  - a. Successful graduation of a board-approved educational program;
  - b. Successful completion of a board-approved examination prescribed or endorsed by the board;
  - c. Hold in good standing a board-approved designation, such as:
    - (1) A music therapist board-certified credential from the certification board for music therapists; or



- (2) A professional designation from the national music therapy registry, which may include registered music therapist, certified music therapist, and advanced certified music therapist.
- d. Physical, mental, and professional capability for the practice of music therapy in a manner acceptable to the board;
- e. 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 or chapter 43-57. The board may modify this restriction for cause.
3. The application must be accompanied by the board-established license fees and application fees and by the documents, affidavits, and certificates necessary to establish that the applicant possesses the necessary qualifications.

**SECTION 6. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$4,000, or so much of the sum as may be necessary, to the office of management and budget for the purpose of providing a grant to the state board of integrative health for assisting with costs associated with establishing the board, for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 7. APPLICATION.** The terms of the initial state board of integrative health care may be for less than two years in order to establish staggered terms with no more than two members' terms expiring in any year.

Approved April 26, 2011  
Filed April 26, 2011

# OFFICES AND OFFICERS

## CHAPTER 332

### SENATE BILL NO. 2232

(Senators Andrist, Burckhard, Nelson)  
(Representatives Froseth, Kilichowski, Maragos)

AN ACT to create and enact a new section to chapter 44-04, a new subsection to section 44-04-18.7, and a new section to chapter 54-40.3 of the North Dakota Century Code, relating to the exemption of medical treatment information in an emergency response record, the exemption of crime scene images, and to joint powers agreements between political subdivisions for a joint emergency services communications system; to amend and reenact sections 32-12.2-12 and 44-04-17.1, subsections 2 and 3 of section 44-04-18, subsection 2 of section 44-04-18.1, subsection 1 of section 44-04-18.3, subsection 3 of section 44-04-18.7, and subsections 2, 3, 4, and 6 of section 44-04-20 of the North Dakota Century Code, relating to state agency loss control committee meetings, the definition of information technology resources, fees and access to electronic records, exempt personal information of a public employee, release of personnel records of employees of the department of corrections and rehabilitation, definition of criminal intelligence information, and public meeting notices posted on a website of a public entity; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 32-12.2-12 of the North Dakota Century Code is amended and reenacted as follows:

**32-12.2-12. State agency loss control committee records and meetings privileged and exempt from open records and open meetings law.**

The portions of the records and meetings of any state agency loss control committee dealing with confidential records addressing any pending or reasonably predictable claim are not public records or exempt from section 44-04-18 and are not open records under section 6 of article XI of the Constitution of North Dakota unless the director of the office of management and budget determines disclosure will not prejudice any pending or reasonably predictable claim and the meetings of any loss control committee of a governing body are not public meetings subject to sections 44-04-18 and section 44-04-19 and sections section 5 and 6 of article XI of the Constitution of North Dakota. TheseThe records and communications at meetings of the committee regarding any pending or reasonably predictable claim are privileged and are not subject to subpoena or discovery or introduction into evidence in any civil action. The records of the committee include all information, data, reports, or records created by or made available to the committee. Any information, data, report, or record otherwise available from original sources is not confidential or immune from discovery or use in any civil action merely because it was presented or considered during the proceedings of the committee. A person who testified before the committee or who is a member of the committee may testify as to matters within that person's

knowledge but may not be asked about the records of, the testimony before, or the discussions of the committee. This section does not relieve any person of any liability incurred as a result of actions reviewed by the committee.

**SECTION 2. AMENDMENT.** Section 44-04-17.1 of the North Dakota Century Code is amended and reenacted as follows:

**44-04-17.1. Definitions.**

As used in this section through section ~~44-04-21.244-04-32~~:

1. "Closed meeting" means all or part of an exempt meeting that a public entity in its discretion has not opened to the public, although any person necessary to carry out or further the purposes of a closed meeting may be admitted.
  2. "Closed record" means all or part of an exempt record that a public entity in its discretion has not opened to the public.
  3. "Confidential meeting" or "confidential record" means all or part of a record or meeting that is either expressly declared confidential or is prohibited from being open to the public.
  4. "Executive session" means all or part of a meeting that is closed or confidential.
  5. "Exempt meeting" or "exempt record" means all or part of a record or meeting that is neither required by law to be open to the public, nor is confidential, but may be open in the discretion of the public entity.
  6. "Governing body" means the multimember body responsible for making a collective decision on behalf of a public entity. "Governing body" also includes any group of persons, regardless of membership, acting collectively pursuant to authority delegated to that group by the governing body.
  7. "Information technology resources" includes data processing hardware and software or technology support services necessary to facilitate a response to a request for electronic records.
  8. "Law" includes federal statutes, applicable federal regulations, and state statutes.
- ~~8-9.~~ a. "Meeting" means a formal or informal gathering or a work session, whether in person or through electronic means such as telephone or videoconference, of:
- (1) A quorum of the members of the governing body of a public entity regarding public business; or
  - (2) Less than a quorum of the members of the governing body of a public entity regarding public business, if the members attending one or more of such smaller gatherings collectively constitute a quorum and if the members hold the gathering for the purpose of avoiding the requirements of section 44-04-19.
- b. "Meeting" does not include:

- (1) A chance or social gathering at which public business is not considered;
- (2) Emergency operations during a disaster or emergency declared under section 37-17.1-10 or an equivalent ordinance if a quorum of the members of the governing body are present but are not discussing public business as the full governing body or as a task force or working group; and
- (3) The attendance of members of a governing body at meetings of any national, regional, or state association to which the public entity, the governing body, or individual members belong.

c. Notwithstanding subdivisions a and b, as applied to the legislative assembly, "meeting" means any gathering subject to section 14 of article IV of the Constitution of North Dakota.

9-10. "Organization or agency supported in whole or in part by public funds" means an organization or agency in any form which has received public funds exceeding the fair market value of any goods or services given in exchange for the public funds, whether through grants, membership dues, fees, or any other payment. An exchange must be conclusively presumed to be for fair market value, and does not constitute support by public funds, when an organization or agency receives a benefit under any authorized economic development program.

40-11. "Political subdivision" includes any county or city, regardless of the adoption of any home rule charter, and any airport authority, township, school district, park district, rural fire protection district, water resource district, solid waste management authority, rural ambulance service district, irrigation district, hospital district, soil conservation district, recreation service district, railroad authority, or district health unit.

44-12. "Public business" means all matters that relate or may foreseeably relate in any way to:

- a. The performance of the public entity's governmental functions, including any matter over which the public entity has supervision, control, jurisdiction, or advisory power; or
- b. The public entity's use of public funds.

42-13. "Public entity" means all:

- a. Public or governmental bodies, boards, bureaus, commissions, or agencies of the state, including any entity created or recognized by the Constitution of North Dakota, state statute, or executive order of the governor or any task force or working group created by the individual in charge of a state agency or institution, to exercise public authority or perform a governmental function;
- b. Public or governmental bodies, boards, bureaus, commissions, or agencies of any political subdivision of the state and any entity created or recognized by the Constitution of North Dakota, state statute, executive order of the governor, resolution, ordinance, rule, bylaw, or executive order

of the chief executive authority of a political subdivision of the state to exercise public authority or perform a governmental function; and

- c. Organizations or agencies supported in whole or in part by public funds, or expending public funds.

~~43-14.~~ "Public funds" means cash and other assets with more than minimal value received from the state or any political subdivision of the state.

~~44-15.~~ "Quorum" means one-half or more of the members of the governing body, or any smaller number if sufficient for a governing body to transact business on behalf of the public entity.

~~45-16.~~ "Record" means recorded information of any kind, regardless of the physical form or characteristic by which the information is stored, recorded, or reproduced, which is in the possession or custody of a public entity or its agent and which has been received or prepared for use in connection with public business or contains information relating to public business. "Record" does not include unrecorded thought processes or mental impressions, but does include preliminary drafts and working papers. "Record" also does not include records in the possession of a court of this state.

~~46-17.~~ "Task force or working group" means a group of individuals who have been formally appointed and delegated to meet as a group to assist, advise, or act on behalf of the individual in charge of a state agency or institution when a majority of the members of the group are not employees of the agency or institution.

**SECTION 3. AMENDMENT.** Subsections 2 and 3 of section 44-04-18 of the North Dakota Century Code are amended and reenacted as follows:

2. Upon request for a copy of specific public records, any entity subject to subsection 1 shall furnish the requester one copy of the public records requested. A request need not be made in person or in writing, and the copy must be mailed upon request. A public entity may charge up to twenty-five cents per impression of a paper copy. As used in this section, "paper copy" means a one-sided or two-sided duplicated copy of a size not more than eight and one-half by fourteen inches [19.05 by 35.56 centimeters]. For any copy of a record that is not a paper copy as defined in this section, the public entity may charge a reasonable fee for making the copy. As used in this section, "reasonable fee" means the actual cost to the public entity of making the copy, including labor, materials, and equipment. The entity may charge for the actual cost of postage to mail a copy of a record. An entity may require payment before locating, redacting, making, or mailing the copy. An entity may impose a fee not exceeding twenty-five dollars per hour per request, excluding the initial hour, for locating records, including electronic records, if locating the records requires more than one hour. An entity may impose a fee not exceeding twenty-five dollars per hour per request, excluding the initial hour, for excising confidential or closed material under section 44-04-18.10 from the records, including electronic records. If the entity is not authorized to use the fees to cover the cost of providing or mailing the copy, or both, or if a copy machine is not readily available, the entity may make arrangements for the copy to be provided or mailed, or both, by another entity, public or private, and the requester shall pay the fee to that other entity. This subsection does not apply to copies of public records for which a different fee is specifically provided by law.

3. Access to electronically stored records is free if the records are recoverable without the use of a computer backup. If a request is made for access to a record on a backup, or for a copy of an electronically stored record, in addition to the charge in this section, the public entity may charge a reasonable fee for providing the copies, including costs attributable to the use of information technology resources. Automation of public records must not erode the right of access to those records. As each public entity increases its use of and dependence on electronic recordkeeping, each agency must provide reasonable public access to records electronically maintained and must ensure that exempt or confidential records are not disclosed except as otherwise permitted by law. A public entity may not enter into a contract for the creation or maintenance of a public records database if that contract impairs the ability of the public to inspect or copy the public records of the agency, including public records online or stored in an electronic recordkeeping system used by the agency. An electronic copy of a record must be provided upon request at no cost, other than costs allowed in subsection 2, except if the nature or volume of the public records requested to be accessed or provided requires extensive use of information technology resources, the agency may charge no more than the actual cost incurred for the extensive use of information technology resources incurred by the public entity. "Extensive" is defined as a request for copies of electronic records which take more than one hour of information technology resources to produce.

**SECTION 4. AMENDMENT.** Subsection 2 of section 44-04-18.1 of the North Dakota Century Code is amended and reenacted as follows:

2. Except as otherwise specifically provided by law, personal information regarding a public employee contained in an employee's personnel record or given to the state or a political subdivision by the employee in the course of employment is exempt. As used in this section, "personal information" means a person's home address; home telephone number or personal cell phone number; photograph; medical information; motor vehicle operator's identification number; public employee identification number; payroll deduction information; the name, address, telephone number, and date of birth of any dependent or emergency contact; any credit, debit, or electronic fund transfer card number; and any account number at a bank or other financial institution.

**SECTION 5.** A new section to chapter 44-04 of the North Dakota Century Code is created and enacted as follows:

**Medical condition or medical treatment information obtained during emergency medical response - Exempt.**

The medical condition of an individual, medical treatment provided to an individual, and the name of an individual who received medical treatment from a public entity during an emergency medical response is an exempt record.

**SECTION 6. AMENDMENT.** Subsection 1 of section 44-04-18.3 of the North Dakota Century Code is amended and reenacted as follows:

1. Any telephone number and the home address of a juvenile court ~~supervisor~~director or probation officer, an employee of a law enforcement agency, employee of a state or local correctional facility, and an employee of the department of corrections and rehabilitation are confidential. ~~A record containing information relating to~~ Information contained in a personnel record of an employee of the department of corrections and rehabilitation may not be

~~disclosed to an appropriate authority under policy established by the department of corrections and rehabilitation inmate in the legal custody of the department of corrections and rehabilitation confined in a jail, prison, or other correctional facility unless authorized by the director of the department of corrections and rehabilitation.~~

**SECTION 7. AMENDMENT.** Subsection 3 of section 44-04-18.7 of the North Dakota Century Code is amended and reenacted as follows:

3. "Criminal intelligence information" means information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity. Criminal intelligence information must be considered "active" as long as it is related to intelligence gathering conducted with a reasonable good-faith belief ~~that~~ it will lead to detection of ongoing or reasonably anticipated criminal activities. Criminal intelligence information also includes training materials and information obtained by a criminal justice agency regarding prospective criminal activities which impact officer safety until the information is publicly disclosed.

**SECTION 8.** A new subsection to section 44-04-18.7 of the North Dakota Century Code is created and enacted as follows:

Crime scene images of a victim of a homicide or sex crime or any image of a minor victim of any crime is an exempt record as defined in subsection 5 of section 44-04-17.1.

**SECTION 9. AMENDMENT.** Subsections 2, 3, 4, and 6 of section 44-04-20 of the North Dakota Century Code are amended and reenacted as follows:

2. The notice required in this section must contain the date, time, and location of the meeting and, if practicable, the topics to be considered. However, the lack of an agenda in the notice, or a departure from, or an addition to, the agenda at a meeting, does not affect the validity of the meeting or the actions taken thereat. The notice must also contain the general subject matter of any executive session expected to be held during the meeting. For meetings to be held by telephone or videoconference, or other electronic means, the location of the meeting and the place the meeting is held is the location of a speakerphone or monitor as required under section 44-04-19.
3. If the governing body holds regularly scheduled meetings, the schedule of these meetings, including the aforementioned notice information, if available, must be filed annually in January with the secretary of state for state-level bodies or for public entities defined in subdivision c of subsection 12 of section 44-04-17.1, the city auditor or designee of the city for city-level bodies, and the county auditor or designee of the county for all other bodies or the schedule must be posted on the public entity's website. This schedule must be furnished to anyone who requests the information. When reasonable and practicable, a governing body of a public entity should attempt to set a regular schedule for its meetings by statute, ordinance, or resolution. This subsection does not apply to meetings of the legislative assembly or any committee thereof.
4. The notice required in this section must be posted at the principal office of the governing body holding the meeting, if such exists, and at the location of the meeting on the day of the meeting. In addition, unless all the information

contained in the notice was previously filed with the appropriate office under subsection 3, the notice must be filed in the office of the secretary of state for state-level bodies or for public entities defined in subdivision c of subsection 12 of section 44-04-17.1, the city auditor or designee of the city for city-level bodies, ~~and~~ the county auditor or designee of the county for all other bodies, or posted on the public entity's website. This subsection does not apply to meetings of the legislative assembly or any committee thereof.

6. In the event of emergency or special meetings of a governing body, the person calling such a meeting shall, in addition to the notices in subsection 4, also notify the public entity's official newspaper, if any, and any representatives of the news media which have requested to be so notified of such special or emergency meetings, of the time, place, date, and topics to be considered at the same time as such governing body's members are notified. If the public entity does not have an official newspaper, then it must notify the official newspaper of the county where its principal office or mailing address is located. Topics that may be considered at an emergency or special meeting are limited to those included in the notice.

**SECTION 10.** A new section to chapter 54-40.3 of the North Dakota Century Code is created and enacted as follows:

**Application of open records law.**

If a joint powers agreement is entered into between a political subdivision of this state and a political subdivision of another state which creates a joint emergency services communications system, the joint powers agreement must address which jurisdiction's open records law will apply in the event a request is made for records that originated from the partner state but is in the possession of the joint emergency services communications system located in North Dakota. The agreement may provide that the emergency services records may be provided pursuant to the open records law of the originating state. If the joint powers agreement does not address this matter, it will be presumed that records will be provided pursuant to North Dakota law.

**SECTION 11. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 8, 2011  
Filed April 11, 2011



## CHAPTER 333

### HOUSE BILL NO. 1396

(Representatives Delmore, Dahl, DeKrey, Hawken)  
(Senators Flakoll, Schneider)

AN ACT to create and enact a new section to chapter 44-04 of the North Dakota Century Code, relating to exempting certain library, archive, and museum collections from open records requirements.

#### 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:

#### **Library, archive, and museum collections - Exempt records.**

A public library, archive, or museum may designate a donated record as an exempt record if the donor of the record requests as a condition of the donation that the record not be released to the public for a specific amount of time, which may not exceed twenty years beyond the death of the donor.

Approved April 4, 2011  
Filed April 4, 2011

## CHAPTER 334

### HOUSE BILL NO. 1136

(Judiciary Committee)

(At the request of the Commission on Uniform State Laws)

AN ACT to create and enact chapter 44-06.1 of the North Dakota Century Code, relating to notarial acts; to amend and reenact subsection 6 of section 10-19.1-84, subsection 4 of section 44-05-01, and sections 44-08-06 and 47-19-18 of the North Dakota Century Code, relating to notarial acts; to repeal chapter 44-06 and sections 47-19-14.1, 47-19-14.2, 47-19-14.3, 47-19-14.4, 47-19-14.5, 47-19-14.6, 47-19-14.7, and 47-19-14.8 of the North Dakota Century Code, relating to notarial acts; and to provide a penalty.

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

<sup>120</sup> **SECTION 1. AMENDMENT.** Subsection 6 of section 10-19.1-84 of the North Dakota Century Code is amended and reenacted as follows:

6. A shareholder, beneficial owner, or holder of a voting trust certificate of a publicly held corporation has, upon written demand stating the purpose and acknowledged or verified in the manner provided in chapter ~~44-06~~44-06.1, a right at any reasonable time to examine and copy the corporation's share register and other corporate records reasonably related to the stated purpose and described with reasonable particularity in the written demand upon demonstrating the stated purpose to be a proper purpose. The acknowledged or verified demand must be directed to the corporation at its registered office in this state or at its principal place of business.

**SECTION 2. AMENDMENT.** Subsection 4 of section 44-05-01 of the North Dakota Century Code is amended and reenacted as follows:

4. Notary public anywhere in the state, ~~upon complying with section 44-06-04.~~

**SECTION 3.** Chapter 44-06.1 of the North Dakota Century Code is created and enacted 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.

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<sup>120</sup> Section 10-19.1-84 was also amended by section 19 of Senate Bill No. 2174, chapter 87.

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 subdivision j of subsection 6 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. "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. "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. "Signature" means a tangible symbol or an electronic signature that evidences the signing of a record.
12. "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. "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.

#### **44-06.1-02. Applicability.**

The provisions of this chapter apply to notarial acts performed on or after the effective date of this chapter.

#### **44-06.1-03. Authority to perform notarial acts.**

A notarial officer may perform notarial acts authorized by this chapter or by other law of this state.

#### **44-06.1-04. Requirements for certain notarial acts.**

1. A notarial officer who takes an acknowledgment of a record shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer and making the acknowledgment has the identity claimed and that the signature on the record is the signature of the individual.
2. A notarial officer who takes a verification of a statement on oath or affirmation shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer and making the verification has the identity claimed and that the signature on the statement verified is the signature of the individual.
3. A notarial officer who witnesses or attests to a signature shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer and signing the record has the identity claimed.
4. A notarial officer who certifies or attests a copy of a record or an item that was copied shall determine that the copy is a full, true, and accurate transcription or reproduction of the record or item.
5. A notarial officer who makes or notes a protest of a negotiable instrument shall determine the matters set forth in section 41-03-62.

#### **44-06.1-05. Personal appearance required.**

If a notarial act relates to a statement made in or a signature executed on a record, the individual making the statement or executing the signature shall appear personally before the notarial officer.

#### **44-06.1-06. Identification of individual.**

1. A notarial officer has personal knowledge of the identity of an individual appearing before the officer if the individual is personally known to the officer through dealings sufficient to provide reasonable certainty that the individual has the identity claimed.
2. A notarial officer has satisfactory evidence of the identity of an individual appearing before the officer if the officer can identify the individual:

a. By means of:

- (1) A passport, driver's license, or government-issued nondriver identification card that is currently valid or expired not more than three years before performance of the notarial act; or
- (2) Another form of government identification issued to an individual that is currently valid or expired not more than three years before performance of the notarial act, contains the individual's signature or a photograph of the individual, and is satisfactory to the officer; or

b. By a verification on oath or affirmation of a credible witness personally appearing before the officer and known to the officer or whom the officer can identify on the basis of a passport, driver's license, or government-issued nondriver identification card that is currently valid or expired not more than three years before performance of the notarial act.

3. A notarial officer may require an individual to provide additional information or identification credentials necessary to assure the officer of the identity of the individual.

**44-06.1-07. Authority to refuse to perform notarial act.**

1. A notarial officer may refuse to perform a notarial act if the officer is not satisfied that:

- a. The individual executing the record is competent or has the capacity to execute the record; or
- b. The individual's signature is knowingly and voluntarily made.

2. Except as prohibited by law other than the provisions of this chapter, a notarial officer may refuse to perform a notarial act.

**44-06.1-08. Signature if individual unable to sign.**

If an individual is physically unable to sign a record, the individual may direct an individual other than the notarial officer to sign the individual's name on the record. The notarial officer shall insert "Signature affixed by (insert name of other individual) at the direction of (insert name of individual)" or words of similar import.

**44-06.1-09. Notarial act in this state.**

1. A notarial act may be performed in this state by the following individuals:

- a. A notary public of this state;
- b. A judge, clerk, or deputy clerk of any court of this state; or
- c. Any other individual authorized to perform the specific act by the law of this state.

2. The signature and title of an individual performing a notarial act in this state are prima facie evidence that the signature is genuine and that the individual holds the designated title.

3. The signature and title of a notarial officer described in subdivision a or b of subsection 1 conclusively establish the authority of the officer to perform the notarial act.

#### **44-06.1-10. Notarial act in another state.**

1. A notarial act performed in another state has the same effect under the law of this state as if performed by a notarial officer of this state, if the act performed in that state is performed by:
  - a. A notary public of that state;
  - b. A judge, clerk, or deputy clerk of a court of that state; or
  - c. Any other individual authorized by the law of that state to perform the notarial act.
2. The signature and title of an individual performing a notarial act in another state are prima facie evidence that the signature is genuine and that the individual holds the designated title.
3. The signature and title of a notarial officer described in subdivision a or b of subsection 1 conclusively establish the authority of the officer to perform the notarial act.

#### **44-06.1-11. Notarial act under authority of tribe.**

1. A notarial act performed under the authority and in the jurisdiction of a federally recognized American Indian tribe has the same effect as if performed by a notarial officer of this state, if the act performed in the jurisdiction of that tribe is performed by:
  - a. A notary public of that tribe;
  - b. A judge, clerk, or deputy clerk of a court of that tribe; or
  - c. Any other individual authorized by the law of that tribe to perform the notarial act.
2. The signature and title of an individual performing a notarial act under the authority of and in the jurisdiction of a federally recognized American Indian tribe are prima facie evidence that the signature is genuine and that the individual holds the designated title.
3. The signature and title of a notarial officer described in subdivision a or b of subsection 1 conclusively establish the authority of the officer to perform the notarial act.

#### **44-06.1-12. Notarial act under federal authority.**

1. A notarial act performed under federal law has the same effect under the law of this state as if performed by a notarial officer of this state, if the act performed under federal law is performed by:
  - a. A judge, clerk, or deputy clerk of a court;

- b. An individual in military service or performing duties under the authority of military service who is authorized to perform notarial acts under federal law;
  - c. An individual designated a notarizing officer by the United States department of state for performing notarial acts overseas; or
  - d. Any other individual authorized by federal law to perform the notarial act.
2. The signature and title of an individual acting under federal authority and performing a notarial act are prima facie evidence that the signature is genuine and that the individual holds the designated title.
  3. The signature and title of an officer described in subdivision a, b, or c of subsection 1 establish the authority of the officer to perform the notarial act.

#### **44-06.1-13. Foreign notarial act.**

1. In this section, "foreign state" means a government other than the United States, a state, or a federally recognized American Indian tribe.
2. If a notarial act is performed under authority and in the jurisdiction of a foreign state or constituent unit of the foreign state or is performed under the authority of a multinational or international governmental organization, the act has the same effect under the law of this state as if performed by a notarial officer of this state.
3. If the title of office and indication of authority to perform notarial acts in a foreign state appear in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively established.
4. The signature and official stamp of an individual holding an office described in subsection 3 are prima facie evidence that the signature is genuine and the individual holds the designated title.
5. An apostille in the form prescribed by the Hague Convention of October 5, 1961, and issued by a foreign state party to the Hague Convention conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.
6. A consular authentication issued by an individual designated by the United States department of state as a notarizing officer for performing notarial acts overseas and attached to the record with respect to which the notarial act is performed conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

#### **44-06.1-14. Certificate of notarial act.**

1. A notarial act must be evidenced by a certificate. The certificate must:
  - a. Be executed contemporaneously with the performance of the notarial act;

- b. Be signed and dated by the notarial officer and, if the notarial officer is a notary public, be signed in the same manner as on file with the secretary of state;
  - c. Identify the jurisdiction in which the notarial act is performed;
  - d. Contain the title of office of the notarial officer; and
  - e. Indicate the date of expiration, if any, of the notarial officer's commission, if the officer is a notary public.
2. If a notarial act is performed by a notary public regarding a tangible record, the notary public's official stamp must be affixed to the certificate. If a notarial act is performed by a notarial officer, other than a notary public, regarding a tangible record and the certificate contains the information specified in subdivisions b, c, and d of subsection 1, an official stamp may be affixed to the certificate. If the notarial act is performed by a notarial officer regarding an electronic record and the certificate contains the information specified in subdivisions b, c, and d of subsection 1, an official stamp may be attached to or logically associated with the certificate.
3. A certificate of a notarial act is sufficient if it meets the requirements of subsections 1 and 2 and:
  - a. Is in a short form set forth in section 44-06.1-19;
  - b. Is in a form otherwise permitted by the law of this state;
  - c. Is in a form permitted by the law applicable in the jurisdiction in which the notarial act was performed; or
  - d. Sets forth the actions of the notarial officer and the actions are sufficient to meet the requirements of the notarial act as provided in sections 44-06.1-04, 44-06.1-05, and 44-06.1-06 or other law.
4. By executing a certificate of a notarial act, a notarial officer certifies that the officer has complied with the requirements and made the determinations specified in sections 44-06.1-04, 44-06.1-05, and 44-06.1-06.
5. A notarial officer may not affix the officer's signature to, or logically associate it with, a certificate until the notarial act has been performed.
6. If a notarial act is performed regarding a tangible record, a certificate must be part of, or securely attached to, the record. If a notarial act is performed regarding an electronic record, the certificate must be affixed to, or logically associated with, the electronic record. If the secretary of state has established standards pursuant to section 44-06.1-25 for attaching, affixing, or logically associating the certificate, the process must conform to the standards.

#### **44-06.1-15. Official stamp.**

The official stamp of a notary public must:



1. Include the notary public's name, jurisdiction, commission expiration date, and other information required under section 44-06.1-16 or by the secretary of state; and
2. Be capable of being copied together with the record to which it is affixed or attached or with which it is logically associated.

#### **44-06.1-16. Stamping device.**

1. The secretary of state, upon receipt of the proper fee, oath, and bond, shall issue a certificate of authorization with which the notary public may obtain an official notary stamping device. A notary stamp vendor may provide a notary with an official stamping device only upon presentation by the notary of a certificate of authorization. The notary public shall place an impression of the notary's stamp on the certificate of authorization and return the certificate of authorization to the secretary of state. After the certificate of authorization is received, approved, and filed, the secretary of state shall issue a notary commission that authorizes the notary to commence the duties of the office of notary public. A notary being commissioned must obtain a stamping device approved by the secretary of state which must be designed to leave a clear impression, be photographically reproducible, include the words "State of North Dakota" and "Notary Public", contain the name and commission expiration date of the notary public exactly as shown on the notary's commission, and which may not contain any other words, numbers, symbols, or a reproduction of the great seal of the state. All notary stamps must be surrounded by a border and, except as otherwise permitted by the secretary of state, be either one and five-eighths inch [41.28 millimeters] in diameter or if of a rectangular design, may be up to or equal to seven-eighths inch [22.23 millimeters] vertically by two and five-eighths inches [66.68 millimeters] horizontally.
2. A notary public is responsible for the security of the notary public's stamping device and may not allow another individual to use the device to perform a notarial act. On resignation from, or the revocation or expiration of, the notary public's commission, or on the expiration of the date set forth in the stamping device, if any, the notary public shall disable the stamping device by destroying, defacing, damaging, erasing, or securing it against use in a manner that renders it unusable. On the death or adjudication of incompetency of a notary public, the notary public's personal representative or guardian or any other individual knowingly in possession of the stamping device shall render it unusable by destroying, defacing, damaging, erasing, or securing it against use in a manner that renders it unusable.
3. If a notary public's stamping device is lost or stolen, the notary public or the notary public's personal representative or guardian shall notify promptly the secretary of state on discovering that the device is lost or stolen.
4. An official stamping device is the property of the notary only and may not be retained or used by any other person, including an employer of a notary even if the employer purchased or paid for the notary's stamping device. An official stamping device must remain in the direct and exclusive control of the notary at all times during a notary's commission.

**44-06.1-17. Notary vacancies - Resignations.**

Whenever the office of any notary public becomes vacant, the record of the notary together with all papers relating to the office must be deposited in the office of the secretary of state except for the stamping device, which must be destroyed as provided in section 44-06.1-16. If a notary public resigns the notary's commission, the notary shall notify the secretary of state within thirty days of the resignation, and shall indicate the effective date of the resignation. Any notary public who, on resignation or removal from office, or any executor or personal representative of the estate of any deceased notary public who neglects to deposit the records and papers as aforesaid for the space of three months, or any person who knowingly destroys, defaces, or conceals any records or papers of any notary public, shall forfeit and pay a sum of not less than fifty dollars nor more than five hundred dollars, and that person also is liable in a civil action for damages to any party injured.

**44-06.1-18. (Effective after July 31, 2013) Notification regarding performance of notarial acts on electronic record - Selection of technology.**

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.

**44-06.1-19. Short form.**

The following short form certificates of notarial acts are sufficient for the purposes indicated, if completed with the information required by subsections 1 and 2 of section 44-06.1-14:

1. For an acknowledgment in an individual capacity:

State of \_\_\_\_\_

[County] of \_\_\_\_\_

This record was acknowledged before me on \_\_\_\_\_ by \_\_\_\_\_

Date      Name(s) of individual(s)

\_\_\_\_\_

Signature of notarial officer

Stamp

[ \_\_\_\_\_ ]

Title of office

[My commission expires: \_\_\_\_\_.]

2. For an acknowledgment in a representative capacity:

State of \_\_\_\_\_

[County] of \_\_\_\_\_

This record was acknowledged before me on \_\_\_\_\_ by \_\_\_\_\_

Date Name(s) of individual(s)

(type of authority, such as officer or trustee) of (name of party on behalf of whom record was executed.)

\_\_\_\_\_

Signature of notarial officer

Stamp

[ \_\_\_\_\_ ]

Title of office

[My commission expires: \_\_\_\_\_.]

3. For a verification on oath or affirmation:

State of \_\_\_\_\_

[County] of \_\_\_\_\_

Signed and sworn to (or affirmed) before me on \_\_\_\_\_ by \_\_\_\_\_

Date Name(s) of individual(s)

making statement

\_\_\_\_\_

Signature of notarial officer

Stamp

[ \_\_\_\_\_ ]

Title of office

[My commission expires: \_\_\_\_\_.]

4. For witnessing or attesting a signature:

State of \_\_\_\_\_

[County] of \_\_\_\_\_

Signed [or attested] before me on \_\_\_\_\_ by \_\_\_\_\_

Date \_\_\_\_\_ Name(s) of individual(s)

\_\_\_\_\_

Signature of notarial officer

Stamp

[ \_\_\_\_\_ ]

Title of office

[My commission expires: \_\_\_\_\_.]

5. For certifying a copy of a record:

State of \_\_\_\_\_

[County] of \_\_\_\_\_

I certify that this is a true and correct copy of a record in the possession of  
\_\_\_\_\_.

Dated \_\_\_\_\_

\_\_\_\_\_

Signature of notarial officer

Stamp

[ \_\_\_\_\_ ]

Title of office

[My commission expires: \_\_\_\_\_.]

**44-06.1-20. Notary public commission - Qualifications.**

- 1. An individual qualified under subsection 2 may apply to the secretary of state for a commission as a notary public. The applicant shall comply with and provide the information required by the secretary of state and submit the required application fee of thirty-six dollars.

2. An applicant for a commission as a notary public must:
  - a. Be at least eighteen years of age;
  - b. Be a citizen or permanent legal resident of the United States;
  - c. Be a resident of or have a place of employment or practice in this state or must reside in a county that borders this state and which is in a state that extends reciprocity to a notary public who resides in a border county of this state. If the person resides in a county bordering this state, that person by applying for a commission in this state appoints the secretary of state as the agent for service of process, for all purposes relating to notarial acts, including the receipt of correspondence relating to notarial acts;
  - d. Be able to read and write English; and
  - e. Not be disqualified to receive a commission under section 44-06.1-21.
3. Before issuance of a commission as a notary public, an applicant for the commission shall execute an oath of office and submit it to the secretary of state.
4. Before issuance of a commission as a notary public, the applicant for a commission shall submit to the secretary of state an assurance in the form of a surety bond or its functional equivalent in the amount of seven thousand five hundred dollars and is subject to approval by the secretary of state. The assurance must be issued by a surety or other entity licensed or authorized to do business in this state. The assurance must cover acts performed during the term of the notary public's commission and must be in the form prescribed by the secretary of state. If a notary public violates law with respect to notaries public in this state, the surety or issuing entity is liable under the assurance. The surety or issuing entity shall give thirty days' notice to the secretary of state before canceling the assurance. The surety or issuing entity shall notify the secretary of state not later than thirty days after making a payment to a claimant under the assurance. A notary public may perform notarial acts in this state only during the period that a valid assurance is on file with the secretary of state.
5. On compliance with subsections 1, 2, 3, and 4, the secretary of state shall issue a notary public commission to an applicant for a term of six years, unless sooner removed by the secretary of state. The notary shall post the commission in a conspicuous place in the notary's office or place of employment.
6. A commission to act as a notary public authorizes the notary public to perform notarial acts. The commission does not provide a notary public any immunities or benefits conferred by law of this state on public officials or employees.
7. Notwithstanding any other provision of law, a notary public may perform any notarial act as defined in section 44-06.1-01 outside the state as provided in section 47-19-55.
8. The secretary of state shall notify each notary public at least thirty days before the expiration of the notary public's term of the date upon which the notary

public's commission will expire. The notice must be addressed to the notary public at the last-known place of residence.

9. Each notary public issued a commission shall notify the secretary of state by mail within sixty days of any change of address. If a notary fails to notify the secretary of state within sixty days of a change of address, the secretary of state may impose a late fee in the amount of ten dollars. The notary shall pay any late fee imposed by the secretary of state before the renewal of the notary's commission.

**44-06.1-21. Grounds to deny, refuse to renew, revoke, suspend, or condition commission of notary public.**

1. The secretary of state may deny or refuse to renew a notary public commission, or may revoke, suspend, or condition a notary public commission for any act or omission that demonstrates an individual lacks the honesty, integrity, competence, or reliability to act as a notary public, including:
  - a. Failure to comply with the requirements of this chapter;
  - b. Fraudulent, dishonest, or deceitful misstatement or omission in the application for a commission as a notary public submitted to the secretary of state;
  - c. A conviction of the notary public or applicant of any felony or a crime involving fraud, dishonesty, or deceit;
  - d. A finding against, or admission of liability by, the applicant or notary public in any legal proceeding or disciplinary action based on the applicant's or notary public's fraud, dishonesty, or deceit;
  - e. Failure by the notary public to discharge any duty or responsibility required of a notarial officer, whether by any provision in this chapter, any rules of the secretary of state, or any federal or state law;
  - f. Use of false or misleading advertising or representations by the notary public representing that the notary public has duties, rights, or privileges that a notary public does not have;
  - g. Violation by the notary public of any rule of the secretary of state regarding a notary public;
  - h. Denial, refusal to renew, revocation, suspension, or conditioning of a notary public commission in another state; or
  - i. Failure of the notary public to maintain an assurance as provided in section 44-06.1-20.
2. If an applicant for a commission as a notary public is denied the commission or a commission is revoked or suspended, the applicant or notary public is entitled to timely notice and hearing in accordance with chapter 28-32. The notice may provide that the person may not perform any notarial acts during the pendency of the revocation proceeding. A notary whose commission is revoked may be denied a new commission for a period of up to six years following the date of revocation.

3. The authority of the secretary of state to deny, suspend, refuse to renew, or revoke a notary public's commission does not prevent the secretary of state or an aggrieved person from seeking and obtaining other remedies provided by law, whether criminal or civil.
4. A notary public who exercises the duties of a notary's office with knowledge that the notary's commission has expired or has been revoked or that the notary is disqualified otherwise or any other person who acts as a notary or performs a notarial act without a lawful notary commission is guilty of an infraction, and, if appropriate, the notary's commission must be revoked by the secretary of state using the procedure under chapter 28-32.
5. The secretary of state may impose a lesser sanction for a violation of any provision of this chapter if determined appropriate by the secretary of state under the pertinent facts and circumstances. A lesser sanction includes imposition of a civil penalty not to exceed five hundred dollars or a letter of reprimand.
6. Any person may file a complaint with the secretary of state seeking denial, revocation, or suspension of a commission issued or to be issued by the secretary of state. The secretary of state shall provide a complaint form. The complainant shall use that form and the form must be verified under oath by the complainant or duly authorized officer of the complainant. If the secretary of state determines that a complaint alleges facts that, if true, would require denial, revocation, or suspension of a commission, the secretary of state shall initiate a hearing without undue delay. If the secretary of state determines a complaint does not state facts warranting a hearing, the secretary of state may dismiss the complaint. The secretary of state may initiate a hearing for denial, revocation, or suspension of a commission on the secretary of state's own motion.
7. Any person whose commission has been revoked or suspended may apply to the secretary of state for reinstatement of the commission or termination of the suspension.

**44-06.1-22. (Effective after July 31, 2013) Database of notaries public.**

The secretary of state shall maintain an electronic database of notaries public:

1. Through which an individual may verify the authority of a notary public to perform notarial acts; and
2. Which indicates whether a notary public has notified the secretary of state that the notary public will be performing notarial acts on electronic records.

**44-06.1-23. Prohibited acts.**

1. A commission as a notary public does not authorize an individual to:
  - a. Assist in drafting legal records, give legal advice, or otherwise practice law;
  - b. Act as an immigration consultant or an expert on immigration matters;





- e. The date of the verification on oath or affirmation or acknowledgment is not the actual date the document is to be notarized or the verification on oath or affirmation or acknowledgment is undated.
  - f. The signature on the document or the notarial certificate is not an original signature, except as otherwise provided by law.
  - g. The notary is falsely or fraudulently signing or notarizing a document, verification on oath or affirmation, or acknowledgment or in any other way is impersonating or assuming the identity of another notary.
  - h. The signature is on a blank or incomplete document.
  - i. In the case of a document drafted in a language other than English, the document is not accompanied by a permanently affixed and accurate written English translation.
  - j. Except as otherwise provided by law:
    - (1) The document is a copy or certified copy of any vital record authorized or required by law to be registered or filed;
    - (2) The document is a copy or certified copy of an instrument entitled by law to be recorded; or
    - (3) The document is a copy or certified copy of a public record containing an official seal.
  - k. The notary did not obtain satisfactory evidence of the identity of the signer, unless the signer is personally known to the notary.
7. A notary public may not make or purport to make any certified copy of a vital record, a recordable instrument, or a public record containing an official seal as described in subdivision j of subsection 6.
8. A notary public must affix the notary's seal to each verification on oath or affirmation or acknowledgment at the time of performing the notarial act.

#### **44-06.1-24. Validity of notarial acts.**

Except as otherwise provided in this chapter, the failure of a notarial officer to perform the duties or meet the requirements specified in this chapter does not invalidate a notarial act performed by the notarial officer. The validity of a notarial act under this chapter does not prevent an aggrieved person from seeking to invalidate the record or transaction that is the subject of the notarial act or from seeking other remedies based on other laws of this state or law of the United States. This section does not validate a purported notarial act performed by an individual who does not have the authority to perform the act.

#### **44-06.1-25. Rules.**

The secretary of state may adopt rules to implement the provisions of this chapter. Rules adopted regarding the performance of notarial acts with respect to electronic records may not require, or accord greater legal status or effect to, the

implementation or application of a specific technology or technical specification. The rules may include:

1. Provisions prescribing the manner of performing notarial acts regarding tangible and electronic records.
2. Provisions to ensure that any change to or tampering with a record bearing a certificate of a notarial act is self-evident.
3. Provisions to ensure integrity in the creation, transmittal, storage, or authentication of electronic records or signatures.

**44-06.1-26. Notary public commission in effect.**

A commission as a notary public in effect on the effective date of this Act continues until its date of expiration. A notary public who applies to renew a notary public commission after the effective date of this Act shall comply with the provisions of this chapter. A notary public, in performing notarial acts after the effective date of this Act, shall comply with the provisions of this chapter and is subject to refusal to renew the notary public's commission or revocation or suspension of the notary public's commission under this chapter.

**44-06.1-27. Name change.**

A notary who has legally changed the notary's name shall submit to the secretary of state a rider to the notary's surety bond stating both the old and new names, the effective date of the new name, and a ten dollar fee within sixty days of the name change. Upon receipt of the rider and fee, the secretary of state shall issue a certificate of authorization that a notary public may use to obtain a new stamping device. Once the authorization is on file, the secretary of state shall issue a commission with the notary's new name. After notification to the secretary of state of the name change and until a new stamping device is obtained, the notary may continue to use the old stamping device but must sign any notarial certificate substantially as follows:

\_\_\_\_\_  
Notary public North Dakota

Formerly known and commissioned as

\_\_\_\_\_  
My commission expires

Notary Seal

**44-06.1-28. Fees to be charged for notarial acts - Penalty.**

A notary public is entitled to charge and receive not more than five dollars per notarial act. A notary who charges a fee exceeding that amount is guilty of an infraction. It is an infraction for any person other than the notary public to impose or collect any monetary fee, charge, or commission in connection with the notarization of any document. A notary may charge a travel fee when traveling to perform a notarial act if:

1. The notary and the person requesting the notarial act agree upon the travel fee in advance of the travel; and
2. The notary explains to the person requesting the notarial act that the travel fee is both separate from the notarial fee and neither specified nor mandated by law.

#### **44-06.1-29. Savings clause.**

The provisions of this chapter do not affect the validity or effect of a notarial act performed before the effective date of this Act.

**44-06.1-30. Relation to Electronic Signatures in Global and National Commerce Act.** The provisions of this chapter modify, limit, and supersede the federal Electronic Signatures in Global and National Commerce Act [15 U.S.C. 7001 et seq.] but do 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 4. AMENDMENT.** Section 44-08-06 of the North Dakota Century Code is amended and reenacted as follows:

#### **44-08-06. Dimensions of seal of court or officer.**

Except as otherwise provided in ~~section 44-06-04~~ by law relating to notary seals/stamps, upon every seal of a court or officer of this state required or authorized to have a seal, there must be engraved the words "State of North Dakota" and the name of the court or office in which the seal is to be used. All such seals, except the great seal, must be surrounded by a border, and be either one and five-eighths inch [41.28 millimeters] in diameter or if of a rectangular design, may be up to or equal to seven-eighths inch [22.23 millimeters] vertically by two and five-eighths inches [66.68 millimeters] horizontally.

**SECTION 5. AMENDMENT.** Section 47-19-18 of the North Dakota Century Code is amended and reenacted as follows:

#### **47-19-18. Deputies may take acknowledgments.**

When any officer mentioned in ~~sections~~ section 47-19-14, ~~47-19-14.1, and 47-19-14.2~~ is authorized by law to appoint a deputy, the acknowledgment or proof may be taken by such deputy in the name of the principal as deputy, or by such deputy as deputy.

**SECTION 6. REPEAL.** Chapter 44-06 and sections 47-19-14.1, 47-19-14.2, 47-19-14.3, 47-19-14.4, 47-19-14.5, 47-19-14.6, 47-19-14.7, and 47-19-14.8 of the North Dakota Century Code are repealed.

Approved April 18, 2011  
Filed April 18, 2011

## CHAPTER 335

### SENATE BILL NO. 2065

(Government and Veterans Affairs Committee)  
(At the request of the State Board of Higher Education)

AN ACT to amend and reenact subsection 1 of section 44-08-04 of the North Dakota Century Code, relating to officer and employee claims for meals.

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

<sup>121</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 44-08-04 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as provided in section 44-08-04.1, each elective or appointive officer, employee, representative, or agent of this state, or of any of its subdivisions, agencies, bureaus, boards, or commissions, may make claim for meals and lodging while engaged in the discharge of a public duty away from the claimant's normal working and living residence for all or any part of any quarter of a day. Claims may also be made for meals that are included as part of a registration fee for a conference, seminar, or other meeting and for meals attended at the request of and on behalf of the state or any of its subdivisions, agencies, bureaus, boards, or commissions; however, if a meal is included in a registration fee, the applicable quarter allowance cannot be claimed for that meal. Claims for meals specifically included in a registration fee for a conference, seminar, or other meeting must be allowed even if the city at which the conference, seminar, or meeting is held or the meal is provided is the claimant's normal working and living residence. If a higher education athletic team or other organized institution organization group meal is attended at the request of and on behalf of the institution, actual expenses for the entire group, including coaches, trainers, and other employees, may be paid or submitted for payment on a team or group travel expense report; subsection 2 does not apply; and officers and employees are not required to document individual expenses or submit individual travel reimbursement vouchers. Reimbursement is allowed only for overnight travel or other travel, away from the normal place of employment, for four hours or more. Verification of expenses by receipt is required only for lodging expenses.

Approved April 19, 2011  
Filed April 19, 2011

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<sup>121</sup> Section 44-08-04 was also amended by section 1 of House Bill No. 1426, chapter 336.

## CHAPTER 336

### HOUSE BILL NO. 1426

(Representatives Boehning, Heller, Karls)  
(Senators Miller, Wardner)

AN ACT to amend and reenact subsection 2 of section 44-08-04 of the North Dakota Century Code, relating to travel reimbursement rates for state employees and officers.

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

<sup>122</sup> **SECTION 1. AMENDMENT.** Subsection 2 of section 44-08-04 of the North Dakota Century Code is amended and reenacted as follows:

2. For travel within the state, the following rates for each quarter of any twenty-four-hour period must be used:
  - a. First quarter is from six a.m. to twelve noon and the sum must be ~~five~~six dollars. First quarter reimbursement may not be made if travel began after seven a.m.
  - b. Second quarter is from twelve noon to six p.m. and the sum must be ~~seventy-nine~~nine dollars ~~and fifty cents~~.
  - c. Third quarter is from six p.m. to twelve midnight and the sum must be ~~twelve~~fifteen dollars ~~and fifty cents~~.
  - d. Fourth quarter is from twelve midnight to six a.m. and the sum must be the actual lodging expenses not to exceed an amount established by policy by the director of the office of management and budget plus any additional applicable state or local taxes. The director shall establish a policy to set the lodging reimbursement at an amount equal to ninety percent of the rate established by the United States general services administration for lodging reimbursement in this state. A political subdivision may reimburse an elective or appointive officer, employee, representative, or agent for actual lodging expenses.

Approved April 25, 2011  
Filed April 25, 2011

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<sup>122</sup> Section 44-08-04 was also amended by section 1 of Senate Bill No. 2065, chapter 335.

## CHAPTER 337

### HOUSE BILL NO. 1251

(Representatives Koppelman, Wieland, Guggisberg)  
(Senators J. Lee, Sorvaag, Schneider)

AN ACT to create and enact a new section to chapter 44-08 and a new section to chapter 54-40.3 of the North Dakota Century Code, relating to cooperative agreements among criminal justice agencies.

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

**SECTION 1.** A new section to chapter 44-08 of the North Dakota Century Code is created and enacted as follows:

##### Interagency cooperation.

1. Any appointive or elective agency or office of peace officers, as defined in section 12-63-01, may establish policies and enter agreements with other agencies and offices and a state or local criminal justice agency of this state may establish policies and procedures or enter agreements with other criminal justice agencies of this state to:
  - a. Assist other state and local criminal justice agencies; and
  - b. Exchange the criminal justice agency's peace officers with peace officers of another criminal justice agency on a temporary basis.
2. A criminal justice agency may establish policies for assisting probation and parole officers who are supervising probationers or parolees in the criminal justice agency's jurisdiction.
3.
  - a. When a peace officer provides assistance to another peace officer within the scope of the policies of the peace officer's employing criminal justice agency, the assistance must be within the line of duty and course of employment of the peace officer rendering the assistance.
  - b. When a peace officer acts on behalf of another agency or office within the scope of an exchange agreement entered under subsection 1, the peace officer's actions are within the peace officer's line of duty and course of employment to the same extent as if the peace officer had acted on behalf of the peace officer's employing agency.
4. This section does not extend or enlarge the duties or authority of any peace officer or any other law enforcement agent except as provided in this section.

**SECTION 2.** A new section to chapter 54-40.3 of the North Dakota Century Code is created and enacted as follows:

**Joint exercise of police power.**

A state or a local criminal justice agency of this state, with the approval of its governing body, may enter an agreement in the manner provided in section 54-40.3-01 with another state or a political subdivision of another state, for the joint exercise of peace officer duties. A peace officer acting under an agreement pursuant to this section must be licensed under chapter 12-63, or if the peace officer is from another state, the officer must be licensed or certified by the other state's licensing or certifying authority. A peace officer acting under an agreement pursuant to this section has full peace officer authority in any jurisdiction that is a party to the agreement. Before an agreement entered under this section is effective, the governing body for each criminal justice agency must have approved the agreement and the attorney general must have determined the agreement is legally sufficient.

Approved April 25, 2011  
Filed April 25, 2011

# PARTNERSHIPS

## CHAPTER 338

### HOUSE BILL NO. 1366

(Representatives Brabandt, Devlin, Louser)

AN ACT to amend and reenact subsection 3 of section 45-11-01 and section 47-25-03 of the North Dakota Century Code, relating to a partnership fictitious name and a trade name filed with the secretary of state.

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

**SECTION 1. AMENDMENT.** Subsection 3 of section 45-11-01 of the North Dakota Century Code is amended and reenacted as follows:

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".
- ~~b-c.~~ May not be the same as or deceptively similar to any 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 name to use the proposed name and filing fee of ten dollars, whether domestic or foreign, including:
  - (1) Any corporate name;
  - (2) Any limited liability company name;
  - (3) Any trade name;
  - (4) Any other fictitious partnership name on file with the secretary of state;
  - (5) Any limited partnership name, foreign limited partnership name, or fictitious name certificate on file with the secretary of state, unless there is filed with the fictitious name certificate a written consent of the holder of the similar name to use the proposed name and a filing fee of ten dollars;
  - (6) Any limited liability partnership name;



(7) Any limited liability limited partnership name; or

(8) Any trademark or service mark.

**SECTION 2. AMENDMENT.** Section 47-25-03 of the North Dakota Century Code is amended and reenacted as follows:

**47-25-03. Trade name - Nature.**

A trade name ~~registered may~~

1. 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. 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 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 name to use the proposed name and filing fee of ten dollars, whether domestic or foreign, including:
  - a. Any corporate name;
  - b. Any limited liability company name;
  - c. Any other trade name, domestic or foreign corporation name, domestic or foreign limited liability company name, domestic or foreign;
  - d. Any fictitious partnership name;
  - e. Any limited partnership name, domestic or foreign;
  - f. Any limited liability partnership name, domestic or foreign;
  - g. Any limited liability limited partnership name; or a name the right to which is in any manner reserved or registered in the office of the secretary of state, unless there is filed with the trade name registration a written consent of the holder of the similar name to use the proposed name, or if
  - h. Any trademark or service mark.
4. That is a franchise, must be accompanied by a written consent from the franchiser. A trade name may not contain the word "company", "corporation", "incorporated", "limited", "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of any of these words unless the owner of the trade name is a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership as indicated by the words used in the name.

# PROPERTY

## CHAPTER 339

### HOUSE BILL NO. 1367

(Representatives Schatz, Brabandt, Louser)  
(Senators Nodland, Schaible)

AN ACT to amend and reenact sections 47-10.1-05 and 47-10.1-06 of the North Dakota Century Code, relating to reports of agricultural land ownership by aliens; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 47-10.1-05 of the North Dakota Century Code is amended and reenacted as follows:

##### **47-10.1-05. Reports.**

~~Any individual, partnership, limited partnership, limited liability company, trustee, or other business entity prohibited from future acquisition of agricultural land may retain title to any agricultural land within this state acquired prior to July 1, 1979, but it shall file a report with the agriculture commissioner by October 1, 1979, and annually before July first thereafter, containing a description of all agricultural land held within this state, the purchase price and market value of the land, the use to which it is put, the date of acquisition, and any other reasonable information required by the commissioner. The commissioner shall monitor for compliance with this chapter all reports transmitted to the commissioner pursuant to the Agricultural Foreign Investment Disclosure Act of 1978 [7 U.S.C. 3501 et seq.]. The commissioner shall make the information reports available to the public.~~

**SECTION 2. AMENDMENT.** Section 47-10.1-06 of the North Dakota Century Code is amended and reenacted as follows:

##### **47-10.1-06. Penalty.**

~~Willful failure to properly register any parcel of land as required by section 47-10.1-05; recording, with knowledge, of any instrument in violation of Any person violating section 47-10.1-02; or any other failure to comply with the provisions of sections 47-10.1-01 through 47-10.1-05 is guilty of a class A misdemeanor.~~

Approved April 19, 2011  
Filed April 20, 2011

## CHAPTER 340

### SENATE BILL NO. 2195

(Senators Olafson, Lyson, Schneider)  
(Representatives Delmore, N. Johnson, Maragos)

AN ACT to create and enact a new subsection to section 47-16-17.1 of the North Dakota Century Code, relating to remedies for termination of a lease due to domestic violence.

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

**SECTION 1.** A new subsection to section 47-16-17.1 of the North Dakota Century Code is created and enacted as follows:

In an action for a violation of this section, the court may award statutory damages of one thousand dollars. The court also may award actual damages, reasonable attorney's fees, costs, and disbursements.

Approved April 26, 2011  
Filed April 26, 2011

## CHAPTER 341

### SENATE BILL NO. 2149

(Senators Grindberg, J. Lee, Robinson)  
(Representatives Gruchalla, Klemin, Louser)

AN ACT to create and enact chapter 47-33 of the North Dakota Century Code, relating to a prohibition on private transfer fee obligations.

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

**SECTION 1.** Chapter 47-33 of the North Dakota Century Code is created and enacted as follows:

##### **47-33-01. Definitions.**

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

1. "Private transfer fee" means a fee or charge required by a private transfer fee obligation and payable upon the transfer of an interest in real property, or payable for the right to make or accept this transfer, regardless of whether the fee or charge is a fixed amount or is determined as a percentage of the value of the property, the purchase price, or other consideration given for the transfer. The term does not include:
  - a. Any consideration payable by the grantee to the grantor for the interest in real property being transferred, including any subsequent additional consideration for the property payable by the grantee based upon any subsequent appreciation, development, or sale of the property, provided the additional consideration is payable on a one-time basis only and the obligation to make such payment does not bind successors in title to the property. For the purposes of this subdivision, an interest in real property may include a separate mineral estate and its appurtenant surface access rights.
  - b. Any commission payable to a licensed real estate broker for the transfer of real property under an agreement between the broker and the grantor or the grantee, including any subsequent additional commission for that transfer payable by the grantor or the grantee based upon any subsequent appreciation, development, or sale of the property.
  - c. Any interest, charges, fees, or other amounts payable by a borrower to a lender under a loan secured by a mortgage against real property, including any fee payable to the lender for consenting to an assumption of the loan or a transfer of the real property subject to the mortgage, any fees or charges payable to the lender for estoppel letters or certificates, and any shared appreciation interest or profit participation or other consideration and payable to the lender in connection with the loan.
  - d. Any rent, reimbursement, charge, fee, or other amount payable by a lessee to a lessor under a lease, including any fee payable to the lessor

- for consenting to an assignment, subletting, encumbrance, or transfer of the lease.
- e. Any consideration payable to the holder of an option to purchase an interest in real property or the holder of a right of first refusal or first offer to purchase an interest in real property for waiving, releasing, or not exercising the option or right upon the transfer of the property to another person.
  - f. Any tax, fee, charge, assessment, fine, or other amount payable to or imposed by a governmental authority.
  - g. Any fee, charge, assessment, fine, or other amount payable to a homeowners', condominium, cooperative, mobile home, or property owners' association under a declaration or covenant or law applicable to the association, including fees or charges payable for estoppel letters or certificates issued by the association or its authorized agent.
  - h. Any fee, charge, assessment, dues, contribution, or other amount imposed by a declaration or covenant encumbering a community, and payable to a nonprofit or charitable organization for the purpose of supporting cultural, educational, charitable, recreational, environmental, conservation, or other similar activities benefiting the community that is subject to the declaration or covenant.
  - i. Any fee, charge, assessment, dues, contribution, or other amount pertaining to the purchase or transfer of a club membership relating to real property owned by the member, including any amount determined by reference to the value, purchase price, or other consideration given for the transfer of the real property.
2. "Private transfer fee obligation" means an obligation arising under a declaration or covenant recorded against the title to real property, or under any other contractual agreement or promise, whether or not recorded, that requires or purports to require the payment of a private transfer fee to the declarant or other person specified in the declaration, covenant, or agreement, or to the declarant's or other person's successors or assigns, upon a subsequent transfer of an interest in the real property.
3. "Transfer" means the sale, gift, conveyance, assignment, inheritance, or other transfer of an ownership interest in real property located in this state.

#### **47-33-02. Prohibition on private transfer fee obligation.**

A private transfer fee obligation recorded or entered in this state on or after the effective date of this Act does not run with the title to real property and is not binding on or enforceable at law or in equity against any subsequent owner, purchaser, or mortgagee of any interest in real property as an equitable servitude or otherwise. Any private transfer fee obligation that is recorded or entered in this state on or after the effective date of this Act is void and unenforceable. This section does not mean that a private transfer fee obligation recorded or entered in this state before the effective date of this Act is presumed valid and enforceable.

### **47-33-03. Liability for violation.**

Any person that records or enters an agreement imposing a private transfer fee obligation in that person's favor on or after the effective date of this Act is liable for any and all damages resulting from the imposition of the transfer fee obligation on the transfer of an interest in the real property, including the amount of any transfer fee paid by a party to the transfer, and all attorney's fees, expenses, and costs incurred by a party to the transfer or mortgagee of the real property to recover any transfer fee paid or in connection with an action to quiet title. If an agent acts on behalf of a principal to record or secure a private transfer fee obligation, liability is deemed assessed to the principal, rather than the agent.

### **47-33-04. Disclosure.**

A seller of real property shall furnish to any purchaser a written statement disclosing the existence of any private transfer fee obligation. This written statement must include a description of the private transfer fee obligation and must include a statement that private transfer fee obligations are subject to certain prohibitions under this chapter.

### **47-33-05. Notice requirements for existing transfer fee obligations.**

1. For a private transfer fee obligation imposed before the effective date of this Act, the receiver of the fee shall record, before December 31, 2011, against the real property subject to the private transfer fee obligation a separate document in the county records in which the real property is located that meets all of the following requirements:
  - a. The title of the document must be "Notice of Private Transfer Fee Obligation" in at least fourteen-point boldfaced type;
  - b. The amount, if the fee is a flat amount, or the percentage of the sales price constituting the cost of the transfer fee, or the other basis by which the transfer fee is to be calculated;
  - c. If the real property is residential property, actual dollar-cost examples of the transfer fee for a home priced at one hundred thousand dollars, two hundred fifty thousand dollars, and five hundred thousand dollars;
  - d. The date or circumstances under which the private transfer fee obligation expires, if any;
  - e. The purpose for which the funds from the private transfer fee obligation will be used;
  - f. The name of the person to which funds are to be paid and specific contact information regarding where the funds are to be sent;
  - g. The acknowledged signature of the payee; and
  - h. The legal description of the real property burdened by the private transfer fee obligation.
2. The person to which the transfer fee is to be paid may file an amendment to the notice of transfer fee containing new contact information, but the amendment must contain the recording information of the notice of transfer

fee which it amends and the legal description of the property burdened by the private transfer fee obligation.

3. If the payee fails to comply fully with subsection 1, the grantor of any real property burdened by the private transfer fee obligation may proceed with the conveyance of any interest in the real property to any grantee and is deemed to have acted in good faith and is not subject to any obligations under the private transfer fee obligation. In this event, the real property is conveyed free and clear of the transfer fee and private transfer fee obligation.
4. If the payee fails to provide a written statement of the transfer fee payable within thirty days of the date of a written request for the same sent to the address shown in the notice of transfer fee, then the grantor, on recording of the affidavit required under subsection 5, may convey any interest in the real property to any grantee without payment of the transfer fee and is not subject to any further obligations under the private transfer fee obligation. In this event, the real property is conveyed free and clear of the transfer fee and private transfer fee obligation.
5. An affidavit stating the facts enumerated under subsection 6 must be recorded in the office of the county recorder in the county in which the real property is situated before or simultaneously with a conveyance under subsection 4 of real property unburdened by a private transfer fee obligation. An affidavit filed under this subsection must state that the affiant has actual knowledge of, and is competent to testify to, the facts in the affidavit and must include the legal description of the real property burdened by the private transfer fee obligation, the name of the person appearing by the record to be the owner of such real property at the time of the signing of the affidavit, a reference by recording information to the instrument of record containing the private transfer fee obligation, and an acknowledgment that the affiant is testifying under penalty of perjury.
6. When recorded, an affidavit as described in subsection 5 constitutes prima facie evidence that:
  - a. A request for the written statement of the transfer fee payable in order to obtain a release of the fee imposed by the private transfer fee obligation was sent to the address shown in the notification; and
  - b. The person listed on the notice of transfer fee failed to provide the written statement of the transfer fee payable within thirty days of the date of the notice sent to the address shown in the notification.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 342

### HOUSE BILL NO. 1421

(Representatives R. Kelsch, Porter)  
(Senator Cook)

AN ACT to create and enact a new chapter to title 47 of the North Dakota Century Code, relating to good funds for real estate transactions.

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

**SECTION 1.** A new chapter to title 47 of the North Dakota Century Code is created and enacted as follows:

##### Definitions.

As used in this chapter:

1. "Closing agent" means a person that closes a real estate transaction in connection with the purchase, sale, or financing of an interest in real estate. The term does not include a lender or an employee of a lender that conducts a settlement or closing of a real estate secured loan provided by the lender in the office of the lender.
2. "Escrow account" means:
  - a. A checking account established by a closing agent with a bank, savings and loan association, credit union, or savings bank that is chartered under the laws of a state or the United States and which is used exclusively for the deposit and disbursement of funds for a real estate transaction; or
  - b. A trust account maintained by an attorney under the North Dakota Rules of Professional Conduct.
3. "Good funds" means funds in any one or more of the following forms:
  - a. United States currency.
  - b. Wired funds unconditionally held by and irrevocably credited to the escrow account of the closing agent.
  - c. A check that has been presented for payment and for which payment has been received. As used in this subdivision, the term check includes a certified check and a cashier's check.
  - d. A check not to exceed three thousand dollars which is drawn on the trust account of a real estate broker licensed under chapter 43-23 or on the trust account maintained by an attorney under the North Dakota Rules of Professional Conduct, if the closing agent has reasonable and prudent grounds to believe that sufficient funds will be available for withdrawal from the trust account on which the check is drawn at the time of disbursement of funds from the closing agent's escrow account.



- e. A cashier's check not to exceed ten thousand dollars in the aggregate that is drawn on an existing account at a bank, savings and loan association, credit union, or savings bank chartered under the laws of a state or the United States.
  - f. A check drawn on the escrow account of another closing agent, if the closing agent in the real estate transaction has reasonable and prudent grounds to believe that sufficient funds will be available for withdrawal from the account upon which the check is drawn at the time of disbursement of funds from the escrow account of the closing agent in the real estate transaction.
4. "Real estate transaction" means a transaction in which a person deposits with a closing agent funds that are to be held until a specified event occurs or the performance of a prescribed condition in connection with the purchase, sale, or financing of an interest in real estate; or a settlement or closing conducted in connection with the purchase, sale, or financing of an interest in real estate. The term does not include a loan financing if the only parties to the loan transaction are the lender and the borrower, and the lender is responsible for disbursing all of the funds to the borrower or to a third party in order to pay fees and charges associated with the loan transaction.

**Real estate transaction disbursements.**

A closing agent may not make disbursements from an escrow account in connection with a real estate transaction unless funds that are received from any single party to the real estate transaction which in the aggregate are at least ten thousand dollars are good funds.

Approved April 25, 2011  
Filed April 25, 2011

# PUBLIC BUILDINGS

## CHAPTER 343

### SENATE BILL NO. 2026

(Legislative Management)  
(Advisory Commission on Intergovernmental Relations)

AN ACT to create and enact section 48-01.2-02.1 of the North Dakota Century Code, relating to the bidding threshold for public improvement construction; and to amend and reenact subsection 4 of section 48-01.2-01 and sections 48-01.2-02, 48-01.2-04, and 48-01.2-06 of the North Dakota Century Code, relating to the bidding threshold for public improvement construction.

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

**SECTION 1. AMENDMENT.** Subsection 4 of section 48-01.2-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Construction" means the process of building, altering, repairing, improving, or demolishing any public structure or building or other improvement to any public property. The term does not include the routine operation or maintenance of existing facilities, structures, buildings, or real property or demolition projects costing less than one hundred thousand dollars the threshold established under section 48-01.2-02.1.

**SECTION 2. AMENDMENT.** Section 48-01.2-02 of the North Dakota Century Code is amended and reenacted as follows:

#### **48-01.2-02. Plans and specifications for a public improvement contract.**

Except as otherwise provided in this chapter, if ~~a contract~~ the estimated cost for the construction of a public improvement is ~~estimated to cost~~ in excess of ~~one hundred thousand dollars~~ the threshold established under section 48-01.2-02.1, the governing body shall procure plans, drawings, and specifications for the improvement from an architect or engineer. For a public building in use by or to be used by the North Dakota agricultural experiment station in connection with farm or agricultural research operations, the plans, drawings, and specifications, with the approval of the state board of higher education, may be prepared by an engineer in the regular employment of the agricultural experiment station. For a public building in use by or to be used by the department of transportation for the storage and housing of road materials or road machinery, equipment, and tools, the plans, drawings, and specifications may be prepared by an engineer employed by the department of transportation.

**SECTION 3.** Section 48-01.2-02.1 of the North Dakota Century Code is created and enacted as follows:

**48-01.2-02.1. Public improvement construction threshold.**

The threshold for bidding construction of a public improvement is one hundred thousand dollars. The threshold for procuring plans, drawings, and specifications from an architect or engineer for construction of a public improvement is one hundred thousand dollars.

**SECTION 4. AMENDMENT.** Section 48-01.2-04 of the North Dakota Century Code is amended and reenacted as follows:

**48-01.2-04. Publication of advertisement for bids - Emergency exception.**

1. Except as otherwise provided in this chapter, if the estimated cost for the construction of a public improvement is estimated to cost in excess of one hundred thousand dollars, the governing body shall advertise for bids by publishing for three consecutive weeks. The first publication of the advertisement must be at least twenty-one days before the date of the opening of bids. The advertisement must be published in the official newspaper of the political subdivision in which the public improvement is or will be located, and in a trade publication of general circulation among the contractors, building manufacturers, and dealers in this state, except the advertisement for a public improvement financed by special assessments need be published only once each week for two weeks in the official newspaper with the first publication being at least fourteen days before the bid opening.
2. If a governing body declares an emergency situation, the governing body may contract for the construction of a public improvement without seeking bids.

**SECTION 5. 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.**

Multiple prime bids for the general, electrical, and mechanical portions of a project are required when any individual general, electrical, or mechanical contract or any combination of individual contracts is in excess of one hundred thousand dollars, 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 thousand dollars, 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.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 344

### SENATE BILL NO. 2027

(Legislative Management)  
(Advisory Commission on Intergovernmental Relations)

AN ACT to amend and reenact section 48-01.2-03 of the North Dakota Century Code, relating to specifying materials used in a public improvement.

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

**SECTION 1. AMENDMENT.** Section 48-01.2-03 of the North Dakota Century Code is amended and reenacted as follows:

**48-01.2-03. Specified brands, marks, names, or patented articles may not be specified.**

A governing body, in specifying materials to be used for a public improvement or in plans or specifications for a public improvement, may not request bids for any article of a specified or copyrighted brand or name, the product of any one manufacturer, or any patented apparatus or appliance when the requirement will prevent proper competition, unless the specifications also request bids on other similar articles of equal value, utility, and merit or unless as provided in section 44-08-01.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 345

### SENATE BILL NO. 2025

(Legislative Management)  
(Advisory Commission on Intergovernmental Relations)

AN ACT to amend and reenact sections 48-09-01 and 48-09-02 of the North Dakota Century Code, relating to concessions bidding.

#### 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 the adjacent grounds thereof, ~~when it is deemed to be~~, for the public benefit and good, may grant a concession ~~therein or thereon~~ in the building or on the grounds for any cafe, restaurant, or confectionery, by renting, leasing, and licensing ~~any such~~ a concession to the highest responsible bidder ~~or best bidder, or both~~, at a reasonable rental per month, for a period not exceeding eight years, and may reject any and all bids ~~therefor~~. ~~Provided 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.

**SECTION 2. AMENDMENT.** Section 48-09-02 of the North Dakota Century Code is amended and reenacted as follows:

**48-09-02. Concession advertised in legal newspaper.**

Except as otherwise provided in section 48-09-01, ~~when their a~~ concession granted pursuant to under section 48-09-01 ~~is deemed~~ has estimated gross sales worth more than ~~five hundred~~ twenty-five thousand dollars annually, ~~the same must be let to the highest bidder or best bidder, or both, after the an~~ advertisement for bids ~~therefor for the concession must occur~~ once in each week for three consecutive weeks in a ~~legal~~ the official newspaper published in the city at or near which such concession is located of the entity requesting bids and the concession must be awarded to the highest responsible bidder.

Approved April 25, 2011  
Filed April 25, 2011

# PUBLIC UTILITIES

## CHAPTER 346

### SENATE BILL NO. 2322

(Senators Klein, Krebsbach, Robinson)  
(Representatives Delmore, Keiser, Thoreson)

AN ACT to amend and reenact sections 49-03-01, 49-03-01.4, 49-03-01.5, 49-03-02, 49-03-03, 49-03-04, and 49-03-05 of the North Dakota Century Code, relating to electric transmission providers; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 49-03-01 of the North Dakota Century Code is amended and reenacted as follows:

**49-03-01. Certificate of public convenience and necessity - Secured by electric public utility.**

Ne

1. An electric public utility henceforth shall may not begin construction or operation of a public utility plant or system, or of an extension of a plant or system, ~~except as provided below,~~ without first obtaining from the commission a certificate that public convenience and necessity require or will require ~~such~~ the construction and operation. This section does not require an electric public utility to secure a certificate for an extension within any municipality within which ~~it~~ the electric public utility has lawfully commenced operations. If any electric public utility in constructing or extending its line, plant, or system, unreasonably interferes with or is about to interfere unreasonably with the service or system of any other electric public utility, or any electric cooperative corporation, the commission, on complaint of the electric public utility or the electric cooperative corporation claiming to be injuriously affected, after notice and hearing as provided in this title, may order enforcement of this section with respect to the offending electric public utility and prescribe just and reasonable terms and conditions.
2. An electric transmission provider may not begin construction or operation of an electric transmission line interconnecting with an existing electric transmission line owned or operated by an electric public utility without first obtaining a certificate that public convenience and necessity require or will require the construction or operation.

**SECTION 2. AMENDMENT.** Section 49-03-01.4 of the North Dakota Century Code is amended and reenacted as follows:

#### 49-03-01.4. Enforcement of act.

1. If any electric public utility or electric transmission provider violates or threatens to violate any of the provisions of sections 49-03-01 through 49-03-01.5 or interferes with or threatens to interfere with the service or system of any other electric public utility or rural electric cooperative, the commission, after complaint, notice, and hearing as provided in chapter 28-32, shall make its order restraining and enjoining ~~said~~ the electric public utility or electric transmission provider from constructing or extending its interfering lines, plant, or system. In addition to the restraint imposed, the commission shall prescribe ~~such~~ any terms and conditions as ~~it shall deem~~ the commission deems reasonable and proper.

~~Provided, further, that nothing herein contained shall be construed to~~

2. ~~This section does not~~ prohibit or limit any person, who has been injured in the person's business or property by reason of a violation of sections 49-03-01 through 49-03-01.5 by any electric public utility, electric transmission provider, or electric cooperative corporation, from bringing an action for damages in any district court of this state to recover such damages.

**SECTION 3. AMENDMENT.** Section 49-03-01.5 of the North Dakota Century Code is amended and reenacted as follows:

#### 49-03-01.5. Definitions.

As used in sections 49-03-01 through 49-03-01.5:

1. "Electric provider" means either an electric public utility or a rural electric cooperative.
2. "Electric public utility" means a privately owned supplier of electricity offering to supply or supplying electricity to the general public.
3. "Electric transmission line" means facilities for conducting electric energy at a design voltage of one hundred fifteen kilovolts or greater phase to phase and more than one mile long.
4. "Electric transmission provider" means an owner or operator, other than a rural electric cooperative, of a transmission line the costs of which are recovered directly or indirectly through transmission charges to an electric public utility.
5. "Person" includes an individual, an electric public utility, a corporation, a limited liability company, an association, or a rural electric cooperative.
- ~~4-6.~~ "Rural electric cooperative" includes any electric cooperative organized under chapter 10-13. An electric cooperative, composed of members as prescribed by law, shall not be deemed to be an electric public utility.
- ~~5-7.~~ "Service area" means a defined geographic area containing existing or future service locations established by an agreement among electric providers and approved by the commission.

- ~~6-8.~~ "Service area agreement" means an agreement between electric providers establishing service areas and designating service locations to be served by each provider under section 49-03-06.
- 7-9. "Service location" means the structures, facilities, or improvements on a parcel of real property to which electric service may be provided.

**SECTION 4. AMENDMENT.** Section 49-03-02 of the North Dakota Century Code is amended and reenacted as follows:

**49-03-02. Prerequisites to issuance of certificate of public convenience and necessity.**

1. Before any certificate may issue under this chapter, a certified copy of the articles of incorporation or charter of the utility, if the applicant is a corporation, or a certified copy of the articles of organization of the utility, if the applicant is a limited liability company, ~~shall~~must be filed with the commission. At the hearing ~~of said on the application upon~~after notice as provided in this title, the utility shall submit evidence showing that ~~such~~the applicant has received the consent, franchise, permit, ordinance, or other authority of the proper municipality or other public authority, if required, or has or is about to make application ~~therefor~~for authority. The commission shall have the power, after notice and hearing, to:
  - 1- a. Issue the certificate prayed for;
  - 2- ~~b.~~ Refuse to issue ~~such~~the certificate;
  - 3- ~~c.~~ Issue ~~the certificate~~ for the construction or operation of a portion only of the contemplated facility, line, plant, system, or extension ~~thereof~~of the same; or
  - 4- ~~d.~~ Issue ~~the certificate~~ for the partial exercise of the right or privilege sought, conditioned upon the applicant's having secured or upon the applicant's securing the consent, franchise, permit, ordinance, or other authority of the proper municipality or other public authority, and may attach to the exercise of the rights granted by any certificate ~~such~~ terms and conditions as in ~~its~~the judgment of the commission the public convenience and necessity may require.
2. Notwithstanding any ~~of the foregoing provisions~~other provision of this section, the commission may grant a certificate if ~~no~~an interested party, including any local electric cooperative, has not requested a hearing on ~~said~~an application after receiving at least twenty days' notice of opportunity to request such hearing. In addition, the commission may not issue a certificate to an electric transmission provider for construction or operation of an electric transmission line that will interconnect with an electric transmission line owned or operated by an electric public utility if the electric public utility is willing and able to construct and operate a similar electric transmission line.
3. The commission may impose an application fee of up to one hundred twenty-five thousand dollars for an application under this chapter. With the approval of the emergency commission, the commission may impose an additional amount. The commission shall pay the expenses of processing an application under this chapter from the application fee paid by the public utility in accordance with section 49-02-02.



**SECTION 5. AMENDMENT.** Section 49-03-03 of the North Dakota Century Code is amended and reenacted as follows:

**49-03-03. Franchise not to be exercised without certificate.**

~~No~~A public utility ~~henceforth shall~~or electric transmission provider may not exercise any right or privilege under any franchise or certificate ~~hereafter granted, or under any franchise or certificate heretofore granted,~~ the exercise of which has been suspended or discontinued for more than one year, without first obtaining from the commission a certificate that public convenience and necessity require the exercise of ~~such~~the right or privilege.

**SECTION 6. AMENDMENT.** Section 49-03-04 of the North Dakota Century Code is amended and reenacted as follows:

**49-03-04. Replacement or renewal of franchise - Certificate of public convenience and necessity not necessary.**

~~No~~A public utility or electric transmission provider does not need to secure a renewal of the certificate of public convenience and necessity under this chapter in order to exercise rights under an ordinance ~~hereafter granted where it if either~~ has not suspended operation of its plant and where ~~such~~the franchise merely replaces or renews an expiring or expired franchise.

**SECTION 7. AMENDMENT.** Section 49-03-05 of the North Dakota Century Code is amended and reenacted as follows:

**49-03-05. Complaint upon violation of chapter.**

~~Whenever~~If a public utility or electric transmission provider engages or is about to engage in construction or operation as described in this chapter without having secured a certificate of public convenience and necessity as required by the provisions of this chapter, or ~~whenever~~if a public utility or electric transmission provider constructs or extends its line, plant, or system, or supplies, or offers to supply electric service in violation of this chapter, any interested municipality, public authority, utility, electric cooperative corporation, or person, may file a complaint with the commission. The commission ~~thereupon~~upon acting on the complaint, or upon its own motion without complaint, with or without notice, may make its order requiring the public utility complained of to cease and desist from ~~such~~the construction or operation or other prohibited activity until the further order of the commission. Upon hearing had after due notice given, the commission shall make ~~such~~an order with respect to ~~such~~the public utility or electric transmission provider and prescribe ~~such~~ terms and conditions as are just and reasonable.

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

Approved March 29, 2011  
Filed March 29, 2011

## CHAPTER 347

### HOUSE BILL NO. 1221

(Representatives Keiser, Vigesaa, Williams)  
(Senators Klein, Krebsbach, O'Connell)

AN ACT to amend and reenact section 49-05-16 of the North Dakota Century Code, relating to advance determination of prudence.

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

**SECTION 1. AMENDMENT.** Section 49-05-16 of the North Dakota Century Code is amended and reenacted as follows:

#### **49-05-16. Advance determination of prudence.**

In this section, unless the context otherwise requires, resource addition means construction, modification, purchase, or lease of an energy conversion facility, renewable energy facility, demand response system, transmission facility, or a contract to acquire energy, capacity, or demand response for the purpose of providing electric service. A public utility ~~proposing to construct, lease, or make improvements to an energy conversion facility, renewable energy facility, transmission facility, or proposed energy purchase contract from another entity or person for the purpose of ensuring reliable electric service to its customers~~ that intends to make a resource addition may file an application with the commission for an advance determination of prudence regarding the ~~proposal~~ resource addition. The commission shall pay the expenses associated with investigating the application made by the public utility for prudence of a resource addition from the application fee paid by the public utility in accordance with section 49-02-02.

1. The commission may issue an order approving the prudence of ~~an electrica~~ resource addition if:
  - a. The public utility files with its application a projection of costs to the date of the anticipated commercial operation of the ~~electric~~ resource addition;
  - b. The public utility files with its application a fee in the amount of one hundred twenty-five thousand dollars. Upon request of the commission and with the approval of the emergency commission, the applicant shall pay such additional fees as are reasonably necessary for completion of the application process by the commission. The commission may waive or reduce the fee.
  - c. The commission provides notice and holds a hearing, if appropriate, in accordance with section 49-02-02; and
  - d. The commission determines that the resource addition is ~~reasonable and prudent~~. For facilities located or to be located in this state the commission, in determining whether the resource addition is ~~reasonable and prudent~~, shall consider the benefits of having the ~~energy conversion facility, renewable energy facility, transmission facility, or facility generating the energy to be purchased~~ resource addition located in this state.

2. The commission order must be rendered no later than seven months after the public utility files its application requesting a prudence determination of an electric resource addition.
3. A resource addition approved by the commission is subject to ~~annual~~ reporting requirements until commercial operation of the resource addition. The public utility shall provide periodic reports, as directed by the commission, which must include a description of the status of the resource addition and any changes in material circumstances affecting the resource addition.
4. The commission's order determining prudence of the resource ~~adjustment~~addition is binding for ratemaking purposes.
5. ~~If at any time following~~Following an initial commission order, the commission, ~~following a subsequent hearing, determines may, upon notice and hearing, if appropriate, in accordance with section 49-02-02 determine~~ determine that continuation of a ~~project~~resource addition is no longer prudent or that its prior order should be modified, ~~the~~ Expenses incurred in processing the case must be paid from the fee, including any previously made refund thereof, filed with the prudence determination application for the resource addition.
6. The public utility may recover in its rates, and in a timely manner consistent with the public utility's financial obligations, the amounts the public utility already has expensed, reasonably incurred, or obligated on a ~~project~~prudent resource addition, including interest expense and a return on equity invested in the project up to the time the new order is entered accrued allowance for funds used during construction, even though the ~~project~~resource addition may never be fully operational or used by the public utility to serve its customers. The cost amortization period for a discontinued resource addition may not exceed five years from the date commencement of the recovery is approved by the commission. No return on amounts incurred or obligated by the public utility may be authorized for the period after the resource addition is discontinued. The public utility may request an order from the commission for deferred accounting treatment for costs incurred for a discontinued resource addition.
- 6-7. There is a rebuttable presumption that ~~an energy conversion facility, renewable energy facility, transmission facility, or facility generating the energy to be purchased which is~~ a resource addition located in the state is prudent.

Approved April 11, 2011  
Filed April 11, 2011

## CHAPTER 348

### SENATE BILL NO. 2196

(Senators Wardner, Christmann, Lyson)  
(Representatives Brandenburg, DeKrey, Porter)

AN ACT to amend and reenact subsection 5 of section 49-22-03 and subsection 1 of section 49-22-22 of the North Dakota Century Code, relating to the definition of energy conversion facility and to siting application fees.

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

**SECTION 1. AMENDMENT.** Subsection 5 of section 49-22-03 of the North Dakota Century Code is amended and reenacted as follows:

5. "Energy conversion facility" means any 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;
  - b. Generation by any means other than wind energy conversion exceeding ~~sixty~~fifty megawatts of electricity;
  - ~~b-c.~~ 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;
  - ~~e-d.~~ Manufacture or refinement of fifty thousand barrels [7949.36 cubic meters] or more of liquid hydrocarbon products per day; or
  - ~~d-e.~~ Enrichment of uranium minerals.

**SECTION 2. AMENDMENT.** Subsection 1 of section 49-22-22 of the North Dakota Century Code is amended and reenacted as follows:

1. Every applicant ~~for a certificate of site compatibility under this chapter~~ shall pay to the commission an application fee in:
  - a. An applicant for a certificate of site compatibility shall pay an amount equal to five hundred dollars for each one million dollars of investment in the proposed facility as defined in the federal energy regulatory commission uniform system of accounts. ~~Every~~
  - b. An applicant for a certificate of corridor compatibility shall pay ~~to the commission an application fee in~~ an amount equal to five thousand dollars for each one million dollars of investment in the proposed facility as defined in the federal energy regulatory commission uniform system of accounts. ~~Every~~
  - c. An applicant for a waiver shall pay ~~to the commission an application fee in~~ the amount which would be required for an application for a certificate of site or corridor compatibility for the proposed facility. If a waiver is not

granted for a proposed facility, such application fee paid shall be allowed as a credit against fees payable under this section in connection with an application under this chapter for a certificate or permit for the proposed facility.

- d. An applicant for a transfer of a certificate or permit shall pay an amount to be determined by the commission to cover anticipated expenses of processing the application.
- e. An applicant certifying to the commission under subsection 3 of section 49-22-03 shall pay an amount to be determined by the commission to cover anticipated expenses of processing the application.
- f. The application fee under this subsection shall not be less than five thousand dollars nor more than one hundred thousand dollars.

Approved April 19, 2011  
Filed April 19, 2011

## CHAPTER 349

### HOUSE BILL NO. 1382

(Representatives Conklin, Hatlestad, Onstad)

AN ACT to amend and reenact subsections 11 and 15 of section 49-23-01 of the North Dakota Century Code, relating to the one-call excavation notice system.

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

**SECTION 1. AMENDMENT.** Subsections 11 and 15 of section 49-23-01 of the North Dakota Century Code are amended and reenacted as follows:

11. "Locate" means an operator's markings of an underground facility showing the approximate horizontal location, including all lines, line direction, intersections, tees, and lateral facilities.
15. "Underground facility" means an underground line, pipeline, cable, facility, system, and its appurtenances used to produce, store, convey, gather, transmit, or distribute communications, data, electricity, power, television signals, heat, gas, oil, petroleum products, carbon dioxide, water, steam, sewage, hazardous liquids, and other similar substances. Privately owned and operated underground facilities which do not extend beyond the boundary of the private property are excluded.

Approved April 19, 2011

Filed April 20, 2011

# PUBLIC WELFARE

## CHAPTER 350

### SENATE BILL NO. 2270

(Senator Dever)

AN ACT to amend and reenact section 50-01.2-03.2 of the North Dakota Century Code, relating to county social service board reporting.

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

**SECTION 1. 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 - Financing in exceptional circumstances.**

1. Each county social service board shall administer, under the direction and supervision of the department:
  - a. Locally administered economic assistance programs;
  - b. Replacement programs with substantially similar goals, benefits, or objectives; and
  - c. When necessary, experimental, pilot, or transitional programs with substantially similar goals, benefits, or objectives.
2. ~~On or before February twenty eighth of each year, each county shall report to the department the total amount of county funds expended in the previous year to meet the cost of providing human services required under this title and the number of mills that must have been levied by that county in the prior year to raise that total amount. 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;
  - c. 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.

Approved April 20, 2011  
Filed April 20, 2011



## CHAPTER 351

### HOUSE BILL NO. 1152

(Representatives Devlin, Vigesaa, J. Nelson, Kaldor)  
(Senators Christmann, Robinson)

AN ACT to provide for medicaid supplemental payments to critical access hospitals; to provide for legislative management studies; and to provide an appropriation.

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

**SECTION 1. MEDICAID SUPPLEMENTAL PAYMENT - CRITICAL ACCESS HOSPITALS.** The department of human services shall provide a medicaid supplemental payment to critical access hospitals. The department shall seek federal medicaid funding to support the supplemental payments.

**SECTION 2. PATIENT-CENTERED MEDICAL HOMES - LEGISLATIVE MANAGEMENT STUDY.** During the 2011-12 interim, the legislative management shall consider studying and evaluating the positive and negative impacts of implementation of patient-centered medical homes in the state, including consideration of whether implementation is resulting in North Dakota residents experiencing health care savings and improved medical results as well as whether implementation is impacting North Dakota's critical access hospitals. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

**SECTION 3. HEALTH CARE DELIVERY - LEGISLATIVE MANAGEMENT STUDY.** During the 2011-12 interim, the legislative management shall consider studying the future of health care delivery in the state. The study must focus on the delivery of health care in rural areas of the state and include input from the university of North Dakota school of medicine and health sciences center for rural health, hospitals, and the medical community. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

**SECTION 4. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$1,527,802, or so much of the sum as may be necessary, and from federal funds, the sum of \$1,926,259, or so much of the sum as may be necessary, to the department of human services for the purpose of providing medicaid supplemental payments to critical access hospitals under section 1 of this Act, for the biennium beginning July 1, 2011, and ending June 30, 2013. This funding is considered to be one-time funding for the 2011-13 biennium. The department shall report to the appropriations committees of the sixty-third legislative assembly on the use of this one-time funding.

Approved April 27, 2011  
Filed April 27, 2011

## CHAPTER 352

### HOUSE BILL NO. 1337

(Representatives Kingsbury, Kilichowski)  
(Senator Miller)

AN ACT to authorize the department of human services to convey certain land in Walsh County, North Dakota; and to declare an emergency.

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

**SECTION 1. TRANSFER OF LAND AUTHORIZED.** The state of North Dakota by and through the department of human services may convey the land described in this section to the Grafton park board, for the price and on the terms as determined by the department of human services. Sections 54-01-05.2 and 54-01-05.5 do not apply to the transfer authorized by this Act. The land to be conveyed is a part of the grounds of the developmental center at westwood park, Grafton, described generally as follows:

A parcel of land approximately 77.05 acres, more or less, located within the west  $\frac{1}{2}$  of the west  $\frac{1}{2}$  of the northwest  $\frac{1}{4}$  of section 13, township 157 north, range 53 west.

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

Approved April 4, 2011  
Filed April 4, 2011

## CHAPTER 353

### SENATE BILL NO. 2043

(Legislative Management)  
(Long-Term Care Committee)

AN ACT to provide for a developmental disabilities system reimbursement project.

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

**SECTION 1. DEVELOPMENTAL DISABILITIES SYSTEM REIMBURSEMENT PROJECT.** The department of human services, in conjunction with developmental disabilities service providers, shall develop a prospective or related payment system with an independent rate model utilizing the support intensity scale.

1. The department shall establish a steering committee consisting of representatives from all interested providers and department representatives. 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 contract with a consultant by September 1, 2011, to develop, in collaboration with the steering committee, the payment system and the resource allocation model tying funding to support intensity scale assessed needs of clients.
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. 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.
5. Once testing is complete, the data must be analyzed by the consultant and the consultant shall make any needed rate adjustments, resource allocation modifications, or process assumptions.
6. Beginning in June 2012, 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 Act may not occur before the implementation of the department's new medicaid management information system.

Approved April 26, 2011  
Filed April 26, 2011

## CHAPTER 354

### SENATE BILL NO. 2268

(Senators Wardner, Nelson)  
(Representative N. Johnson)

AN ACT to provide for a regional autism spectrum disorder centers of early intervention and achievement pilot program; to provide for a report to the legislative management; to provide for a report to the sixty-third legislative assembly; to provide for a legislative management study; and to provide an expiration date.

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

**SECTION 1. REGIONAL AUTISM SPECTRUM DISORDER CENTERS OF EARLY INTERVENTION AND ACHIEVEMENT PILOT PROGRAM - REPORT TO THE LEGISLATIVE MANAGEMENT - REPORT TO THE SIXTY-THIRD LEGISLATIVE ASSEMBLY.** During the 2011-13 biennium, the department of human services may use up to \$200,000 of funding from its legislative appropriation to establish and operate a regional autism spectrum disorder centers of early intervention and achievement pilot program.

1. The pilot program must provide a matching grant to a qualified applicant that is a nonprofit intermediate care facility for individuals with intellectual disabilities which is licensed by the department of human services.
2. A qualified applicant shall establish the availability of \$1 of nonstate, cash matching funds for each grant dollar awarded under this section. The source of the matching funds must be funds of the applicant.
3. A qualified applicant shall submit a plan for the funding, development, and delivery of skilled services to individuals with autism spectrum disorder who reside within the applicant's service region. The plan must provide for the establishment of a regional autism spectrum disorder center of early intervention and achievement in a city with a population of more than ten thousand.
4. As a condition of a grant award under this program, a qualified applicant shall agree to collaborate with the department of human services in developing and implementing the plan as well as postaward monitoring by the department of human services.
5. The department of human services shall report to the legislative management before September 30, 2012, on the preliminary findings and recommendations of the pilot program. The department of human services shall provide a written report summarizing the status of the pilot program and any findings and recommendations to the legislative management before December 31, 2012.
6. The department of human services shall report to the appropriations committees of the sixty-third legislative assembly on the status of the pilot program and any findings and recommendations.

**SECTION 2. AUTISM STUDY - LEGISLATIVE MANAGEMENT STUDY.** During the 2011-12 interim, the legislative management shall consider studying the current system for the diagnosis of, early treatment of, care for, and education of individuals with autism spectrum disorder. The study must include a review of a sliding fee scale for payment of services and the value of services provided. The study must consider the recommendations of the autism spectrum disorder task force and must seek input from stakeholders in the private and public sectors, including families affected by autism spectrum disorder, insurers, educators, treatment providers, early childhood service providers, caretakers, and nonprofit intermediate care facilities for individuals with intellectual disabilities. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

**SECTION 3. EXPIRATION DATE.** Section 1 of this Act is effective through June 30, 2013, and after that date is ineffective.

Approved April 26, 2011  
Filed April 26, 2011

## CHAPTER 355

### SENATE BILL NO. 2326

(Senators Mathern, J. Lee)  
(Representative Hofstad)

AN ACT to provide for a substance abuse services pilot voucher payment program; to provide a continuing appropriation; and to provide for a report to the legislative management.

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

**SECTION 1. SUBSTANCE ABUSE SERVICES PILOT VOUCHER PAYMENT PROGRAM - CONTINUING APPROPRIATION.** The department of human services shall establish and administer a pilot voucher payment program to provide substance abuse services for the biennium beginning July 1, 2011, and ending June 30, 2013. The pilot voucher payment program must consist of voucher use and provider choice as a method of providing substance abuse services to beneficiaries. The program must allow a voucher to be submitted to the beneficiary's provider of choice for payment of substance abuse services. The department of human services shall develop service agreements with substance abuse service providers licensed and accredited by the state to offer services in exchange for vouchers, which may be presented to the department for payment as provided for in the agreement. The payment amount may not exceed the cost of the same service provided by the state. The substance abuse services pilot voucher payment program must be developed to improve access to substance abuse services. The department of human services shall apply for funding available through a federal access to recovery grant program available from the federal substance abuse and mental health services administration center for substance abuse treatment. All moneys received by the department through the federal access to recovery grant for the pilot voucher payment program under this section are appropriated and may be spent by the department for costs of the pilot voucher payment program for the biennium beginning July 1, 2011, and ending June 30, 2013. The department of human services shall offer the substance abuse services pilot voucher payment program required by the access to recovery grant program. If no region has available the services required by the access to recovery grant program, the department of human services shall choose a region or regions in which to develop the required services without duplication to meet the access to recovery grant requirements. If the federal access to recovery grant funding is not available to the department, the department is not required to implement the pilot voucher payment program.

**SECTION 2. DEPARTMENT OF HUMAN SERVICES REVIEW - REPORT TO THE LEGISLATIVE MANAGEMENT.** The department of human services shall perform a comprehensive review of the substance abuse services pilot voucher payment program for the biennium beginning July 1, 2011, and ending June 30, 2013. The review must include information regarding the cost of substance abuse services provided through the pilot voucher payment program compared to the cost of similar substance abuse services provided during the 2011-13 biennium. The review must also analyze the effect of the substance abuse services pilot voucher payment program on access to care and outcomes.

The department of human services shall report the preliminary findings of the comprehensive review and any recommendations for continuation or expansion of the pilot voucher payment program to the legislative management prior to September 30, 2012.

Approved April 20, 2011

Filed April 20, 2011

## CHAPTER 356

### SENATE BILL NO. 2095

(Human Services Committee)  
(At the request of the Department of Human Services)

AN ACT to amend and reenact section 50-09-38 of the North Dakota Century Code, relating to payment of transition assistance for child care directly to a child care provider.

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

**SECTION 1. AMENDMENT.** Section 50-09-38 of the North Dakota Century Code is amended and reenacted as follows:

##### **50-09-38. Transition assistance for child care.**

The state agency shall establish a program of transition assistance to pay a portion of the cost of child care for families that lose eligibility, and remain ineligible, for benefits under section 50-09-29 due to earnings from employment. This program must:

1. Provide benefits for up to the six months following the loss of benefits under section 50-09-29;
2. ~~Be paid directly to recipients using a debit card~~Pay assistance to the child care provider; and
3. Meet all requirements to be considered "assistance" for purposes of title 45, Code of Federal Regulations, part 260, section 31, or any substantially similar federal regulation that may replace title 45, Code of Federal Regulations, part 260, section 31.

Approved April 25, 2011  
Filed April 25, 2011



## CHAPTER 357

### HOUSE BILL NO. 1095

(Human Services Committee)  
(At the request of the Department of Human Services)

AN ACT to amend and reenact sections 50-11-00.1 and 50-11-03.2 of the North Dakota Century Code, relating to the approval process of group foster care facilities.

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

**SECTION 1. 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 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. "Authorized agent" means the county social service board, unless another entity is designated by the department.
- ~~2-3.~~ "Department" means the department of human services.
- ~~3-4.~~ "Facility" means a family foster home for adults, family foster home for children, group home, or residential child care facility for children.
- ~~4-5.~~ "Family foster home for adults" means an occupied private residence in which foster care for adults is regularly provided by the owner or lessee thereof, to four or fewer adults who are not related by blood or marriage to the owner or lessee, for hire or compensation.
- ~~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 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 home of a caregiver, to a person age eighteen or older, who is unable, neglects, or refuses to provide for the person'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.~~ "Group home" means a residence in which foster care is regularly provided for more than four, but less than ten, unrelated children.
- ~~9-10.~~ "Residential child care facility" means a facility other than an occupied private residence providing foster care to more than eight unrelated children, except as may be otherwise provided by rule or regulation.

**SECTION 2. AMENDMENT.** Section 50-11-03.2 of the North Dakota Century Code is amended and reenacted as follows:

**50-11-03.2. Use of public funds.**

Public funds for the purchase of foster care for children or adults may be used only in facilities licensed or approved by the department. No person acting on behalf of any state, county, or local governmental entity may arrange for or promote care provided in a facility that does not have a license or approval issued by the department. This section does not apply to any home or institution under the management and control of the state.

Approved April 27, 2011  
Filed April 27, 2011

## CHAPTER 358

### SENATE BILL NO. 2079

(Human Services Committee)  
(At the request of the Department of Human Services)

AN ACT to amend and reenact section 50-11-01.4 of the North Dakota Century Code, relating to a person's ability to provide adult foster care after a license is denied or revoked; to provide for a legislative management study; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 50-11-01.4 of the North Dakota Century Code is amended and reenacted as follows:

##### **50-11-01.4. Foster care for adults - License required.**

A person may not furnish foster care for adults for more than one adult, or for more than two adults who are related to each other, without first procuring a license to do so from the department. A person may not furnish foster care for an adult if the person has had a license denied or revoked unless the department subsequently issues a license to that person.

**SECTION 2. LEGISLATIVE MANAGEMENT STUDY - EXPLOITATION OF ELDERLY.** During the 2011-12 interim, the legislative management shall consider studying the exploitation of the state's elderly and the state's vulnerable adult population. The study must include a review of the vulnerable adult protection system, the use of sections 12.1-31-07, 12.1-31-07.1, and 12.1-31-07.2, and any barriers to the use of those sections. The study also must include a review of state and county services available to detect and respond to elderly abuse. The study also must include a statewide review of the role public administrators and guardians have in providing services to the elderly and to vulnerable adults. The legislative management shall report its findings, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

**SECTION 3. EMERGENCY.** Section 1 of this Act is declared to be an emergency measure.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 359

### HOUSE BILL NO. 1115

(Judiciary Committee)

(At the request of the Department of Human Services)

AN ACT to amend and reenact section 50-11-05 of the North Dakota Century Code, relating to the confidentiality of foster care records.

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

**SECTION 1. AMENDMENT.** Section 50-11-05 of the North Dakota Century Code is amended and reenacted as follows:

#### **50-11-05. Contents of records not disclosed - Exception.**

The records of facilities licensed under this chapter and the records of the department and its authorized agents, pertaining to the children or adults receiving care, are confidential ~~and may be made available~~ but may be disclosed:

1. In a judicial proceeding;
2. To officers of the law or other legally constituted boards or agencies; or
3. To persons who have a definite interest in the well-being of the adults or children concerned, who are in a position to serve their interests, and who need to know the contents of the records in order to assure their well-being and interests.

Approved March 28, 2011

Filed March 28, 2011

## CHAPTER 360

### HOUSE BILL NO. 1085

(Human Services Committee)  
(At the request of the Department of Human Services)

AN ACT to amend and reenact sections 50-11.1-07.8 and 50-25.1-11 of the North Dakota Century Code, relating to conditions on an early childhood license, self-declaration, or registration document involving a child abuse and neglect investigation and to the confidentiality of child abuse and neglect records and information.

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

**SECTION 1. 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 upon a report of child abuse or neglect - Notification to parent.**

1. The department may ~~suspend~~:
  - a. ~~Suspend~~ a license, self-declaration, or registration document ~~during an investigation or~~ at any time after the onset of a child abuse and neglect investigation alleging the owner or operator, the holder of a self-declaration, or the in-home provider has committed child abuse, including child sexual abuse, or has neglected a child and law enforcement has been involved, if continued operation is likely to jeopardize the health and safety of the children.
  - b. Suspend 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 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 program, holder of the self-declaration, or registration, or ~~involving~~ a staff member or 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 ~~shall~~:
  - a. Shall notify the parent of any child receiving early childhood services when that program's license, self-declaration, or registration document is suspended.

- b. May notify the parent of any child receiving early childhood services when an owner, operator, holder of a self-declaration, in-home provider, adult staff member, or adult household member of the program providing care of the child is under investigation under subsection 1.
  - c. May notify the parent of any child receiving early childhood services that a staff member or household member is under investigation under subsection 1 if the staff member or household member is a minor.
3. Upon the conclusion and disposition of the investigation of the program, the department shall notify the parent of each child 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.

**SECTION 2. AMENDMENT.** Section 50-25.1-11 of the North Dakota Century Code is amended and reenacted as follows:

**50-25.1-11. Confidentiality of records - Authorized disclosures.**

1. A report made under this chapter, as well as any other information obtained, is confidential and must be made available to:
  1. a. A physician who has before the physician a child whom the physician reasonably suspects may have been abused or neglected.
  2. b. A person who is authorized to place a child in protective custody and has before the person a child whom the person reasonably suspects may have been abused or neglected and the person requires the information to determine whether to place the child in protective custody.
  3. c. Authorized staff of the department and its authorized agents, children's advocacy centers, and appropriate state and local child protection team members, and citizen review committee members.
  4. d. Any person who is the subject of the report; provided, however, that the identity of persons reporting or supplying information under this chapter is protected until the information is needed for use in an administrative proceeding arising out of the report.
  5. e. Public officials and their authorized agents who require the information in connection with the discharge of their official duties.
  6. f. A court, including an administrative hearing office, whenever the court determines that the information is necessary for the determination of an issue before the court.
  7. g. A person engaged in a bona fide research purpose approved by the department's institutional review board; provided, however, that no individually identifiable information as defined in section 50-06-15 is made available to the researcher unless the information is absolutely essential to the research purpose and the department gives prior approval.
  8. h. A person who is identified in subsection 1 of section 50-25.1-03, and who has made a report of suspected child abuse or neglect, if the child is likely

to or continues to come before the reporter in the reporter's official or professional capacity.

9.
  - i. A parent or a legally appointed guardian of the child identified in the report as suspected of being, or having been, abused or neglected, provided the identity of persons making the report or supplying information under this chapter is protected. Unless the information is confidential under section 44-04-18.7, when a decision is made under section 50-25.1-05.1 that services are required to provide for the protection and treatment of an abused or neglected child, the department shall make a good-faith effort to provide written notice of the decision to persons identified in this subsection. The department shall consider any known domestic violence when providing notification under this section.
2. The parent or legally appointed guardian of a child receiving early childhood services under chapter 50-11.1 may receive the name of the subject, 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, 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. The department shall make a good-faith effort to provide written notice of the results of an assessment conducted under this chapter to parents or legally appointed guardians identified in this subsection.

Approved April 28, 2011

Filed April 28, 2011

## CHAPTER 361

### SENATE BILL NO. 2298

(Senators Heckaman, Marcellais, Mathern)  
(Representatives Delmore, Kilichowski, Metcalf)

AN ACT to create and enact a new section to chapter 50-11.1 of the North Dakota Century Code, relating to the establishment of early childhood services inclusion support services and a grant program for licensed early childhood services providers who care for children with special needs; to provide a statement of legislative intent; to provide for a legislative management study; to provide a continuing appropriation; and to provide an appropriation.

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

**SECTION 1.** A new section to chapter 50-11.1 of the North Dakota Century Code is created and enacted as follows:

##### **Early childhood services inclusion support services and grant program.**

1. The department may establish in collaboration with the department of commerce an early childhood services inclusion grant program for licensed early childhood services providers that provide care for children with disabilities or developmental delays. The grant program must be designed to:
  - a. Increase the number of staff in the adult-to-child ratio to expand supervision and the ability to care for children with disabilities or developmental delays; and
  - b. Assist in modifying or adapting the early childhood services setting as needed to address the health and safety needs of children with disabilities or developmental delays.
2. The department may fund early childhood services specialists to make available technical assistance to early childhood services providers that care for children with special needs or developmental delays. The technical assistance program must be designed to:
  - a. Assist early childhood services providers that request support and information regarding caring for children with special needs or developmental delays;
  - b. Assist early childhood services providers in adapting the program environment and care practices to meet the individual child's needs and to build the early childhood services providers' capacity to serve children with special needs or developmental delays;
  - c. In partnership with the child's parents and health care provider, assist the early childhood services provider in the development or coordination of care plans for children with special needs or special health care needs relevant to the care setting;





7. The department may accept gifts, grants, and donations from any source to assist the department in the establishment and implementation of the early childhood services inclusion support services and grant program. Any gifts, grants, and donations received are appropriated to the department on a continuing basis for the purpose of funding the early childhood services inclusion support services and grant program under this section.

**SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$50,000, or so much of the sum as may be necessary, to the department of human services for the purpose of funding the early childhood services inclusion support services, for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 3. LEGISLATIVE INTENT - GRANT FUNDING.** It is the intent of the legislative assembly that the funding source for grants provided under section 1 of this Act come from that portion of the grant line item of the department of commerce appropriation attributable to the department of commerce's grants for the early childhood facilities program. The total amount of grants awarded under section 1 of this Act which are funded by the department of commerce grant line item may not exceed fifty percent of the funds available under the department of commerce's grants for the early childhood facilities program, and the grant under section 1 of this Act must comply with the maximum grant amount and matching fund requirements of the department of commerce's grants for the early childhood facilities program.

**SECTION 4. LEGISLATIVE MANAGEMENT STUDY - CHILDREN SERVICES FUNDING.** During the 2011-12 interim, the legislative management shall consider studying the delivery of early childhood services and programs aimed at providing services to children, such as head start, temporary assistance to needy families, the early childhood comprehensive system program, and department of public instruction-approved preschools and the funding sources for the recipients and providers of these services. The study must include a review of the various agencies involved in providing grants and other funding for the recipients and providers of these services. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

Approved May 17, 2011  
Filed May 17, 2011

## CHAPTER 362

### HOUSE BILL NO. 1315

(Representatives Paur, Devlin, Vigesaa)  
(Senators Miller, Sitte, Uglen)

AN ACT to amend and reenact subsection 1 of section 50-22-04 of the North Dakota Century Code, relating to the filing of an annual report by a charitable organization.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 50-22-04 of the North Dakota Century Code is amended and reenacted as follows:

1. Every charitable organization that is required to file or that files a registration statement pursuant to section 50-22-02 shall file an annual report along with a ten dollar fee with the secretary of state on or before September first of each year. The report must be postmarked by the United States postal service or other carrier, in a properly addressed, postage prepaid, sealed envelope.

The secretary of state may extend the filing date for the annual report of any charitable organization, if a written application for extension is received before the filing deadline an extension may be granted for a single year, or permanently at the request of the charitable organization. A charitable organization with a fiscal year ending within three months prior to the filing deadline may make a written request for an extension to apply to reports for subsequent years until the fiscal year is changed. A filing date may not be extended under this subsection beyond December first of any given year an annual report is due.

Information submitted must be given as of the close of the business on the thirty-first day of December next preceding the date herein provided for the filing of the report, or, in the alternative, the date of the end of the fiscal year next preceding this report may be used.

Approved March 29, 2011  
Filed March 29, 2011

## CHAPTER 363

### SENATE BILL NO. 2075

(Human Services Committee)  
(At the request of the Department of Human Services)

AN ACT to amend and reenact section 50-24.1-02.3 of the North Dakota Century Code, relating to excess assets in pre-need funeral service contracts, prepayments, or deposits.

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

**SECTION 1. 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. 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. 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.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 364

### HOUSE BILL NO. 1320

(Representatives Klemin, Devlin, Porter)  
(Senators Dever, Uglem)

AN ACT to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to deductions from income for determining medical assistance eligibility.

#### **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:

#### **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 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.

Approved April 20, 2011  
Filed April 20, 2011

## CHAPTER 365

### SENATE BILL NO. 2074

(Human Services Committee)  
(At the request of the Department of Human Services)

AN ACT to amend and reenact subsection 1 of section 50-24.1-07 of the North Dakota Century Code, relating to the recovery by the state from the estate of a permanently institutionalized medical assistance recipient.

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

<sup>123</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 50-24.1-07 of the North Dakota Century Code is amended and reenacted as follows:

1. On the death of any recipient of medical assistance who was a resident of a nursing facility, intermediate care facility for the mentally retarded, or other medical institution and with respect to whom the department of human services determined that resident reasonably was not expected to be discharged from the medical institution and to return home, or who was fifty-five years of age or older when the recipient received the assistance, and on the death of the spouse of the deceased recipient, the total amount of medical assistance paid on behalf of the recipient following the ~~determination~~ 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. Funeral expenses not in excess of three thousand dollars;
  - b. Expenses of the last illness, other than those incurred by medical assistance;
  - c. Expenses of administering the estate, including attorney's fees approved by the court;
  - d. Claims made under chapter 50-01;
  - e. Claims made under chapter 50-24.5;
  - f. Claims made under chapter 50-06.3 and on behalf of the state hospital; and
  - g. Claims made under subsection 4.

Approved April 25, 2011  
Filed April 25, 2011

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<sup>123</sup> Section 50-24.1-07 was also amended by section 22 of Senate Bill No. 2142, chapter 207.

## CHAPTER 366

### HOUSE BILL NO. 1169

(Representatives Kreidt, Devlin, Pollert, Wieland)  
(Senator J. Lee)

AN ACT to amend and reenact section 50-24.4-07 of the North Dakota Century Code, relating to nonallowable costs in nursing home ratesetting.

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

**SECTION 1. AMENDMENT.** Section 50-24.4-07 of the North Dakota Century Code is amended and reenacted as follows:

##### **50-24.4-07. Nonallowable costs.**

1. The following costs may not be recognized as allowable: political contributions; salaries or expenses of a lobbyist, as defined in section 54-05.1-02, for lobbying activities; advertising designed to encourage potential residents to select a particular nursing home; fines and penalties; legal and related expenses for unsuccessful challenges to decisions by governmental agencies; memberships in sports, health, or similar social clubs or organizations; and costs incurred for activities directly related to influencing employees with respect to unionization. The department by rule shall exclude the costs of other items or services not directly related to the provision of resident care.
2. Nonallowable costs include the education expense unless:
  - a. The education was provided by an accredited academic or technical educational facility;
  - b. The education expense was for materials, books, or tuition;
  - c. The facility claims the education expense, annually, in an amount not to exceed ~~the lesser of one half of the individual's education expense or~~ three thousand seven hundred fifty dollars for each individual; and
  - d. The amount of education expense claimed for an individual does not exceed fifteen thousand dollars in the aggregate.
3. The education expense may be claimed the year in which it is expended.
4. For any individual who receives education assistance, the facility shall enter a contract with the individual which stipulates a minimum commitment to work for the facility as well as a repayment plan if the individual does not fulfill the contract obligations.
5. An individual who receives education assistance shall commit to a minimum of one thousand six hundred sixty-four hours of employment after completion of the educational program for each year education assistance was provided by the facility.

6. The facility shall report the education expense separately on the facility's cost report. The expense is allowed as a passthrough and is limited only by the fifteen thousand dollar maximum per individual.
7. If an individual defaults on a contract and education expenses for the individual have previously been claimed in any report year, the facility shall report the amount of repayment on the facility's cost report in the report year in which the default occurs.

Approved April 25, 2011  
Filed April 25, 2011



## CHAPTER 367

### HOUSE BILL NO. 1423

(Representatives Kreidt, Heller, Kempenich, J. Nelson)  
(Senators Bowman, Christmann)

AN ACT to create and enact a new section to chapter 50-24.5 of the North Dakota Century Code, relating to rulemaking authority with respect to the compensation for top management personnel of a basic care facility; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 50-24.5 of the North Dakota Century Code is created and enacted as follows:

**Compensation for top management personnel - Department to adopt emergency rules.**

Notwithstanding the requirements of subsection 2 of section 28-32-03, the department of human services has the authority to create emergency rules related to the compensation for top management personnel of a basic care facility combined with a hospital.

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

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 368

### SENATE BILL NO. 2077

(Human Services Committee)  
(At the request of the Department of Human Services)

AN ACT to create and enact a new chapter to title 50 of the North Dakota Century Code, relating to expanded service payments for elderly and disabled; and to amend and reenact sections 50-24.5-01, 50-24.5-02, 50-24.5-03, and 50-24.5-04 of the North Dakota Century Code, relating to the requirements for basic care assistance eligibility, personal care services, and functional assessment criteria.

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

**SECTION 1. 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. "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. "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 and receives benefits under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], ~~provided that an individual and who washas 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.] and who was receiving benefits under title XVI before January 1, 1995, is not~~

~~ineligible because that individual is not eligible to receive benefits under title XIX;~~

c. 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, which require care in a licensed adult family foster care home or an assisted living facility; or

(2) Is impaired in three of the following four instrumental activities of daily living: preparing meals, doing housework, taking medicine, and doing laundry; and

e. Is determined to be eligible pursuant to rules adopted by the department.

8. ~~"Institution" means an establishment that makes available some treatment or services beyond food or shelter to five or more individuals who are not related to the proprietor 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.
14. ~~"Qualified service provider" means a county agency or independent contractor who agrees to meet standards for services and operations established by the department.~~
12. ~~"Related to the proprietor" means an individual who is a proprietor's spouse or former spouse, or a parent, stepparent, grandparent, stepgrandparent, child, stepchild, grandchild, stepgrandchild, brother, sister, half brother, half sister, stepbrother, or stepsister of a proprietor or proprietor's spouse or former spouse.~~
13. "Remedial care" means services that produce the maximum reduction of an eligible beneficiary's physical or mental disability and the restoration of an eligible beneficiary to the beneficiary's best possible functional level.
- 14-13. "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 ~~the 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 ~~sixty dollars~~ the amount allowed as the personal needs allowance.

**SECTION 2. AMENDMENT.** Section 50-24.5-02 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.5-02. Powers and duties of the department.**

The department shall:

1. Administer aid to vulnerable aged, blind, and disabled persons and supervise and direct county agencies in the administration of aid to vulnerable aged, blind, and disabled persons.
2. ~~Supplement, within the limits of legislative appropriation, the income of an eligible beneficiary receiving necessary adult family foster care services to the extent that the eligible beneficiary lacks income sufficient to meet the cost of that care provided at rates determined by the department.~~
3. Supplement, within the limits of legislative appropriation, the income of an eligible beneficiary receiving necessary basic care services to the extent that the eligible beneficiary lacks income sufficient to meet the cost of that care, provided at rates determined by the department adjusted by the inflation rate for basic care services used to develop the legislative appropriation for the department.
- 4-3. Pay qualified ~~service~~basic care providers at rates determined by the department, within the limits of legislative appropriation, ~~for the provision of the following services provided to an eligible beneficiary to the extent that the eligible beneficiary lacks income sufficient to meet the cost of these services:~~
  - a. ~~Homemaker services;~~
  - b. ~~Chore services;~~
  - c. ~~Respite care;~~
  - d. ~~Home health aide services;~~
  - e. ~~Case management;~~
  - f. ~~Family home care;~~
  - g. ~~Personal attendant care;~~
  - h. ~~Adult family foster care;~~
  - i. ~~Adaptive assessment; and~~
  - j. ~~Other services the department determines to be essential and appropriate to sustain an individual in the individual's home and community and to delay or prevent institutional care.~~
5. Establish, maintain, and ensure the enforcement of standards for congregate housing as may be appropriate to the needs of the residents of congregate housing who are receiving services under this chapter. The standards must govern matters such as admission policy, safety, sanitation, and protection of civil rights.

- ~~6.~~ Establish an individualized care rate for each eligible beneficiary receiving adult family foster care services or assisted living services.
- ~~7.4.~~ Issue payment to basic facilities and adult family foster care facilities for services provided to an eligible beneficiary.
- ~~8.5.~~ Take action and give directions necessary to implement this chapter.

**SECTION 3. 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.**

Each county agency shall:

1. Administer aid to aged, blind, and disabled persons at the county level under the direction and supervision of the department, pursuant to state requirements.
2. Provide the services described in this chapter. ~~The county agency may contract with a qualified service provider in the provision of these services.~~
3. Determine eligibility for benefits under this chapter and periodically redetermine eligibility of persons receiving benefits pursuant to this chapter.
4. ~~Review the circumstances of congregate housing for residents receiving services under this chapter which may exist or may be established in the county and certify to the department that each congregate housing facility conforms to standards contained in rules adopted by the department.~~
5. Provide case management services to eligible beneficiaries.
6. ~~Provide assessments to eligible beneficiaries and to applicants, where necessary.~~
- ~~7.5.~~ Conduct initial and ongoing functional assessments of applicants in cooperation with basic care facilities.
8. ~~Submit an annual budget to the board of county commissioners containing an estimate and supporting data, setting forth the county funds needed to carry out this chapter.~~
- ~~9.6.~~ Cooperate with any other county agency 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 other than the county in which the applicant or eligible beneficiary is a resident for purposes of chapter 50-01.

**SECTION 4. AMENDMENT.** Section 50-24.5-04 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.5-04. Services provided - Limit on cost.**

Services provided under this chapter must be treated as necessary remedial care to the extent those services are not covered under the medical assistance program. The cost of the services provided under this chapter to a person residing in a basic

~~care or adult family foster care~~ facility for which the rate charged includes room and board is limited to the rate set for services in that facility, plus ~~eighty-five dollars~~ the amount allowed as the personal needs allowance, less that person's total income.

**SECTION 5.** A new chapter to title 50 of the North Dakota Century Code is created and enacted as follows:

**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. "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. "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; and
    - (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. "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.
8. "Qualified service provider" means a county agency 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.

### **Powers and duties of the department.**

The department shall:

1. Administer expanded service payments for elderly and disabled and supervise and direct county agencies in the administration of expanded service payments for elderly and disabled.
2. Pay qualified service providers at rates determined by the department, within limits of legislative appropriation, for the provision of the following services provided to eligible individuals:
  - a. Adult day care;
  - b. Adult family foster care;
  - c. Case management;
  - d. Chore services;
  - e. Family home care;
  - f. Homemaker services;
  - g. Nonmedical transportation;
  - h. Respite care; and
  - i. Other services the department determines to be essential and appropriate to sustain an individual in the individual's home and community and to delay or prevent institutional care.
3. Take actions, give directions, and adopt rules as necessary to carry out the provisions of this chapter.

### **Powers and duties of county agency.**

Each county agency shall:

1. Administer expanded service payments for the elderly and disabled at the county level under the direction and supervision of the department, pursuant to state requirements.
2. Provide the services described in this chapter. The county agency 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.

**Applicant's or guardian's duty to establish eligibility.**

The applicant or guardian of the applicant shall provide information sufficient to establish eligibility for benefits, including a social security number and proof of age, identity, residence, blindness, disability, functional limitation, and financial eligibility for each month for which benefits are sought.

**Department has preferred claim against estate.**

Funds used to provide services to an eligible beneficiary may not be considered as gifts. The department has a preferred claim against the estate of any person for recovery of funds expended under this chapter for that person or that person's spouse or minor children. No statute of limitations or similar statute nor the doctrine of laches bars a claim under this chapter.

**Responsibility for expenditures.**

Except as otherwise specifically provided in section 50-03-08, expenditures required under this chapter are the responsibility of the state of North Dakota.

Approved April 25, 2011  
Filed April 25, 2011



## CHAPTER 369

### SENATE BILL NO. 2176

(Senators G. Lee, Lyson, Murphy)  
(Representatives Damschen, Holman, Pietsch)

AN ACT to amend and reenact section 50-25.1-03 of the North Dakota Century Code, relating to individuals required to report child abuse and neglect.

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

<sup>124</sup> **SECTION 1. AMENDMENT.** Section 50-25.1-03 of the North Dakota Century Code is amended and reenacted as follows:

#### **50-25.1-03. Persons required and permitted to report - To whom reported.**

1. Any physician, nurse, dentist, optometrist, dental hygienist, medical examiner or coroner, or any other medical or mental health professional, religious practitioner of the healing arts, schoolteacher or administrator, school counselor, addiction counselor, social worker, child care worker, foster parent, police or law enforcement officer, juvenile court personnel, probation officer, division of juvenile services employee, or member of the clergy having knowledge of or reasonable cause to suspect that a child is abused or neglected, or has died as a result of abuse or neglect, shall report the circumstances to the department if the knowledge or suspicion is derived from information received by that person in that person's official or professional capacity. A member of the clergy, however, is not required to report such circumstances if the knowledge or suspicion is derived from information received in the capacity of spiritual adviser.
2. Any person having reasonable cause to suspect that a child is abused or neglected, or has died as a result of abuse or neglect, may report such circumstances to the department.

Approved April 19, 2011  
Filed April 19, 2011

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<sup>124</sup> Section 50-25.1-03 was also amended by section 2 of Senate Bill No. 2233, chapter 370.

## CHAPTER 370

### SENATE BILL NO. 2233

(Senators Grindberg, Cook, Warner)  
(Representatives Beadle, Hogan, Owens)

AN ACT to create and enact subsection 3 to section 50-25.1-03 of the North Dakota Century Code, relating to a requirement to report sexual conduct by a child discovered on a workplace computer; and to amend and reenact subsection 4 of section 12.1-27.2-01 of the North Dakota Century Code, relating to the definition of sexual conduct as it pertains to sexual performances by children.

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

**SECTION 1. AMENDMENT.** Subsection 4 of section 12.1-27.2-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Sexual conduct" means actual or simulated sexual intercourse, sodomy, sexual bestiality, masturbation, sadomasochistic abuse, or lewd exhibition of the buttocks, breasts, or genitals, including the further definitions of sodomy and sadomasochistic abuse under section 12.1-27.1-01.

<sup>125</sup> **SECTION 2.** Subsection 3 to section 50-25.1-03 of the North Dakota Century Code is created and enacted as follows:

3. A person who has knowledge of or reasonable cause to suspect that a child is abused or neglected, based on images of sexual conduct by a child discovered on a workplace computer, shall report the circumstances to the department.

Approved April 27, 2011  
Filed April 27, 2011

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<sup>125</sup> Section 50-25.1-03 was also amended by section 1 of Senate Bill No. 2176, chapter 369.

# SALES AND EXCHANGES

## CHAPTER 371

### SENATE BILL NO. 2086

(Judiciary Committee)  
(At the request of the Public Service Commission)

AN ACT to amend and reenact section 51-05.1-04 of the North Dakota Century Code, relating to definitions of and exceptions to auctioneer, clerk, and internet auctions.

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

**SECTION 1. AMENDMENT.** Section 51-05.1-04 of the North Dakota Century Code is amended and reenacted as follows:

##### **51-05.1-04. Definitions - Exceptions.**

- ~~1. An~~Except as provided in subsection 5, an auctioneer within the meaning of this chapter is a person; who; for a compensation or valuable consideration, sells or offers for sale either real or personal property at public auction as a whole or partial vocation.
- ~~A~~Except as provided in subsection 5, a clerk within the meaning of this chapter is any person, firm, partnership, copartnership, association, corporation, or limited liability company; who; for a compensation or valuable consideration, is employed either directly or indirectly by an owner while the sale is in progress to record each item offered for sale, its selling price, and the buyer's name or number; to collect all proceeds of said sale; to pay all expenses connected with the sale; to prepare a full closing statement of all receipts and disbursements; and to make settlement thereon to parties properly entitled thereto within a reasonable length of time.
- ~~A single act performed or isolated transactions in the selling of property at auction for another shall not constitute the person performing, offering, or attempting to perform any of the acts enumerated herein, an auctioneer within the meaning of this chapter.~~Internet auction" means the selling or offering for sale either real or personal property at public auction exclusively via the internet.
- "Seller" means the owner or consignor of property to be sold at auction.
- ~~A person performing a single act or an isolated transaction in the selling of property at auction does not constitute the person performing, offering, or attempting to perform any of the acts enumerated in this section, and that person is not an auctioneer or clerk within the meaning of this chapter. A person conducting, or employed by a person conducting, an internet auction is not an auctioneer or clerk within the meaning of this chapter.~~

6. Notwithstanding subsection 5, a person in this state engaged in the auto auction business via the internet must be licensed as a motor vehicle dealer as provided for in section 39-22-23.

Approved April 26, 2011  
Filed April 26, 2011

## CHAPTER 372

### SENATE BILL NO. 2236

(Senators Klein, G. Lee, O'Connell)  
(Representatives Ruby, Kaldor, Vigesaa)

AN ACT to create and enact section 51-07-00.1 and 51-07-02.4 of the North Dakota Century Code, relating to definitions and warranty or incentive audits for new motor vehicle dealers; to amend and reenact section 51-07-02.3 of the North Dakota Century Code, relating to prohibited acts for manufacturers, wholesalers, or distributors of new automobiles and automobile parts; to provide for application; and to declare an emergency.

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

**SECTION 1.** Section 51-07-00.1 of the North Dakota Century Code is created and enacted as follows:

##### **51-07-00.1. Definitions.**

As used in sections 51-07-01, 51-07-02.1, 51-07-02.2, 51-07-02.3, 51-07-02.4, and 51-07-03 unless context or subject matter otherwise requires:

1. "Contract" means any written franchise agreement, sales agreement, dealer agreement, or security agreement, or other form of agreement or arrangement of like effect.
2. "Dealer" means a person that engages in the business of selling, at retail, new motor vehicles or trucks or new and used motor vehicles or trucks and possesses a current new motor vehicle dealer license as defined in section 39-22-16.
3. "Distributor" means any person who in whole or in part offers for sale, sells, or distributes any new motor vehicle to a new motor vehicle dealer, and any person that in whole or in part offers for sale, sells, or distributes any farm implement, machinery, or attachment or part for the same; or lawn and garden equipment, or part for the same; or semitrailer, or part for the same, to any person that retails all or any of these items.
4. "Franchise" or "franchise agreement" means any contract or addendum to a contract between a dealer and a manufacturer or distributor that authorizes the dealer to engage in the business of selling or purchasing any particular make of new motor vehicles or motor vehicle parts manufactured or distributed by the manufacturer or distributor.
5. "Franchisor" means a person that manufactures, imports, or distributes new motor vehicles and which may enter a franchise agreement.
6. "Good cause" means failure by a new motor vehicle dealer to substantially comply with material and reasonable requirements imposed upon the new motor vehicle dealer by the franchise agreement if the requirements are not

- unreasonable when compared to those requirements imposed on other similarly situated new motor vehicle dealers.
7. "Good faith" means honesty in fact and the observance of commercially reasonable, nondiscriminatory standards of fair dealing.
  8. "Manufacturer" means any person that is engaged in the business of manufacturing or assembling new motor vehicles or any person that in whole or in part offers for sale, sells, or distributes any new motor vehicle to a new motor vehicle dealer.
  9. "Merchandise" means farm implements, machinery, attachments, and parts for the same; lawn and garden equipment and parts for the same; and automobiles, trucks, and semitrailers and parts for the same.
  10. "New motor vehicle" means a motor vehicle that has not been subject to a retail sale, the registration provisions of chapter 39-04, the title registration provisions of chapter 39-05, or the motor vehicle excise tax provisions of chapter 57-40.3.
  11. "Owner" means a person, other than a lienholder, having the property in or title to a vehicle. The term includes a person entitled to the use and possession of a vehicle subject to a security interest in another person, but excludes a lessee under a lease not intended as security.
  12. "Semitrailer" includes every vehicle of the trailer type so designed and used in conjunction with a truck that some part of its own weight and that of its own load rests upon or is carried by a truck, except that it does not include a mobile home.
  13. "Successor" means the individual who, in the case of the owner's death, is entitled to inherit the ownership interest in the new motor vehicle dealership or who, in the case of an incapacitated owner of a new motor vehicle dealer, has been appointed by a court as the legal representative of the new motor vehicle dealer's property subject to sections 51-07-26 and 51-07-26.1.
  14. "Truck" includes every motor vehicle designed, used, or maintained primarily for transportation of property or designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.
  15. "Used motor vehicle" means a motor vehicle that has been subject to a retail sale, the registration provisions of chapter 39-04, the title registration provisions of chapter 39-05, or the motor vehicle excise tax provisions of chapter 57-40.3.

**SECTION 2. AMENDMENT.** Section 51-07-02.3 of the North Dakota Century Code is amended and reenacted as follows:

**51-07-02.3. Prohibited acts.**

A manufacturer, wholesaler, or distributor of automobiles or trucks, or parts of the automobiles or trucks, that enters a contract with any person engaged in the business of selling or retailing automobiles, trucks, or parts for the automobiles or trucks, may not:

1. Coerce or attempt to coerce the retailer into accepting delivery of automobiles, trucks, parts, or accessories that the retailer has not ordered voluntarily.
2. Condition or attempt to condition the sale of automobiles or trucks on a requirement that the automobile or truck retailer purchase other goods or services, except that the manufacturer, wholesaler, or distributor may require a retailer to purchase all parts reasonably necessary to maintain the quality of operation and telecommunications necessary to communicate with the manufacturer, wholesaler, or distributor.
3. Implement or establish a system of motor vehicle allocation or distribution to one or more of its dealers that is unfair, inequitable, or unreasonably discriminatory. As used in this subsection, "unfair" includes requiring a dealer to accept new vehicles not ordered by the dealer or the refusal or failure to offer to any dealer all models offered to any of its other same line-make dealers in this state. The failure to deliver any motor vehicle is not a violation of this section if failure is due to any cause over which the manufacturer does not have control.
4. Require a dealer to pay all or any part of the cost of an advertising campaign or contest or purchase any promotional material, showroom, or other display decoration or material at the expense of the dealer.
5. Coerce or attempt to coerce an automobile or truck retailer into not carrying dual lines or into maintaining separate facilities as long as the retailer's facilities otherwise satisfy the reasonable requirements of the manufacturer, wholesaler, or distributor.
6. Require a retailer to either establish or maintain exclusive facilities, personnel, or display space or to abandon an existing franchise relationship with another manufacturer in order to continue, renew, reinstate, or enter a franchise agreement or to participate in any program discount, credit, rebate, or sales incentive. This subsection does not apply to a program that is in effect with more than one dealer in this state on the effective date of this Act or to a renewal or modification of the program.
7. Unreasonably prevent or refuse to approve the relocation of a dealership to another site within the dealer's relevant market area. The dealer shall provide the manufacturer or distributor with notice of the proposed address and a reasonable site plan of the proposed location. The manufacturer or distributor shall approve or deny the request in writing within sixty days after receipt of the request, and failure to deny the request within sixty days is deemed approval.
8. Require the retailer to unreasonably remodel, renovate, or recondition the retailer's facilities, change the location of the facilities, or make unreasonable alterations to the dealership premises.
- ~~4-9.~~ Discriminate in the prices charged for automobiles or trucks of like grade and quality sold by automobile or truck manufacturers to similarly situated automobile or truck retailers. This prohibition does not prevent the use of differentials that solely make due allowance for differences in the cost of manufacture, sale, or delivery or for differing methods or quantities in which the automobiles or trucks are sold or delivered by the manufacturer, wholesaler, or distributor.

10. Refuse or fail to offer any incentive program, bonus payment, holdback margin, or any other mechanism that effectively lowers the net cost of a vehicle to any franchised dealer in this state if the incentive, bonus, or holdback is available or made to one or more same line-make dealers in this state.
- 5-11. Attempt or threaten to terminate, cancel, or fail to renew, or substantially change the competitive circumstances of the dealership contracts for any reason other than the failure of the automobile or truck retailer to comply with the terms of the contract between the parties, if the attempt or threat is based on the results of a circumstance beyond the retailer's control, including a natural disaster in the dealership market area or a labor dispute.
12. Require a dealer in this state to enter any agreement to assent to a release, assignment, novation, waiver, or estoppel in which a dealer relinquishes any rights under this state's law, or which would relieve any person from liability imposed by this state's law unless done in connection with a settlement agreement to resolve a matter between a manufacturer and the dealer. The settlement agreement must be entered voluntarily for separate and valuable consideration, and the renewal, reinstatement, or continuation of a franchise agreement alone does not constitute separate and valuable consideration.
13. Require any dealer in this state to enter any agreement with the manufacturer or any other party which requires the law of another jurisdiction to apply to any dispute between the dealer and manufacturer, requires that the dealer bring an action against the manufacturer in a venue outside of this state, in any way purports to waive any dealer's right to have all of this state's statutory and common law apply, shortens or otherwise modifies or eliminates any dealer's right to resolve any dispute with a manufacturer in a state or federal court in this state, or requires the dealer to agree to arbitration or waive its rights to bring a cause of action against the manufacturer, unless done in connection with a settlement agreement to resolve a matter or pending dispute between a manufacturer and the dealer. This settlement agreement must be entered voluntarily for separate and valuable consideration and renewal, reinstatement, or continuation of a franchise agreement alone is not separate and valuable consideration.

**SECTION 3.** Section 51-07-02.4 of the North Dakota Century Code is created and enacted as follows:

**51-07-02.4. Warranty and incentive claims.**

1. A manufacturer may not conduct a warranty or incentive audit or seek a chargeback on a warranty or incentive payment more than one year after the date of that warranty or incentive payment.
2. A manufacturer may not charge back a dealer for an incentive or warranty payment unless the manufacturer can satisfy its burden of proof that the dealer's claim was false, fraudulent, or the dealer did not substantially comply with the reasonable written procedures of the manufacturer.
3. The audit and chargeback provisions of this section apply to all other incentive and reimbursement programs that are subject to audit by the manufacturer. This section does not apply to fraudulent claims.



**SECTION 4. APPLICATION.** This Act applies to all dealership agreements in effect on the effective date of this Act which do not have an expiration date and which are continuing contracts and all other contracts entered, amended, or renewed on or after the effective date of this Act. A contract in effect on the effective date of this Act, which by its terms will terminate on a date after that date and which is not renewed, is governed by the law as it existed before the effective date of this Act.

**SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 20, 2011  
Filed April 20, 2011

## CHAPTER 373

### SENATE BILL NO. 2182

(Senators Nething, O'Connell)  
(Representative Kingsbury)

AN ACT to amend and reenact section 51-12-01 of the North Dakota Century Code, relating to false and misleading advertising; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 51-12-01 of the North Dakota Century Code is amended and reenacted as follows:

#### **51-12-01. False and misleading advertising prohibited.**

1. No person with intent to sell, dispose of, increase the consumption of, or induce the public to enter an obligation relative to or to acquire title or interest in any ~~food, drug, medicine, patent and proprietary~~ product, merchandise, security, service, performance, ~~medical treatment, paint, varnish, oil, clothing, wearing apparel, machinery,~~ or anything offered to the public may make, publish, disseminate, circulate, broadcast, or place before the public, or directly or indirectly shall cause to be made, published, disseminated, circulated, broadcast, or placed before the public in a newspaper, or other publication, or in the form of a book, notice, handbill, poster, bill, circular, pamphlet, tab, label, letter, television or radio broadcast, placement on the internet, or in any other way, an advertisement or web page that contains any assertion, representation, or statement of fact, including the price thereof or name suggesting the business location of the offeror, which is untrue, deceptive, or misleading regarding such ~~food, drug, medicine, patent and proprietary~~ product, merchandise, security, service, performance, ~~medical treatment, paint, varnish, oil, clothing, wearing apparel, machinery,~~price, business location, or anything offered to the public.
2. It is not a violation of this section to advertise a performance by a performing group if at least one member of the performing group was a member of the recording group, the performance is identified as a "salute" or "tribute" to the recording group, the performance is expressly authorized in the advertising by the recording group, the advertising does not relate to a live music performance taking place in this state, or the advertising contains a disclaimer that the performing group is not the recording group or is not affiliated with the recording group.
3. This section imposes liability on only the offeror of a product or service. This section does not impose liability on a publisher, broadcaster, other advertising media, or an advertising agency that relies on the assurances of a person placing an advertisement that the claims or representations are true.

Approved April 26, 2011  
Filed April 26, 2011

## CHAPTER 374

### HOUSE BILL NO. 1260

(Representatives Wrangham, Delzer, DeKrey)  
(Senators Erbele, Freborg)

AN ACT to amend and reenact section 51-21-05 of the North Dakota Century Code, relating to civil liability for retail theft.

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

**SECTION 1. AMENDMENT.** Section 51-21-05 of the North Dakota Century Code is amended and reenacted as follows:

#### **51-21-05. Civil remedy against adult shoplifters or the parent of a minor shoplifter.**

1. An adult who commits the offense of theft from a merchant is civilly liable to the merchant for the retail value of the merchandise, plus exemplary damages of not more than two hundred fifty dollars, costs of ~~suit~~the civil action, and reasonable attorney's fees.
2. The parent or legal guardian of an unemancipated minor who while living with the parent or legal guardian commits the offense of theft from a merchant is civilly liable to the merchant for the retail value of the merchandise, plus exemplary damages of not more than two hundred fifty dollars, costs of ~~suit~~the civil action, and reasonable attorney's fees. If the merchant knows or reasonably should know that the individual believed to have committed theft is a minor, the merchant may not request that the individual sign an admission of theft or other similar declaration unless the minor's parent, guardian, or attorney is present. An admission in violation of this subsection is not valid and is inadmissible in a civil or criminal action.
3. A conviction or plea of guilty for the theft is not a prerequisite to the bringing of a ~~suit hereunder~~civil action under this section. However, if a criminal theft charge is filed against the individual, the merchant may not pursue civil damages until completion of the criminal action.
4. A parent or legal guardian of an unemancipated minor is not civilly liable under this section if it is determined by the court that one of the principal rationales for the shoplifting was a desire on the part of the minor to cause the minor's parent or legal guardian to be liable under this section.

Approved April 19, 2011  
Filed April 19, 2011

# SOCIAL SECURITY

## CHAPTER 375

### SENATE BILL NO. 2245

(Senators Dever, Schneider, Triplett)  
(Representatives N. Johnson, Maragos, S. Meyer)

AN ACT to amend and reenact subdivision k of subsection 18 of section 52-01-01, subdivision b of subsection 2 of section 52-04-07, and subsection 1 of section 52-06-02 of the North Dakota Century Code, relating to ineligibility and eligibility for unemployment compensation benefits; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Subdivision k of subsection 18 of section 52-01-01 of the North Dakota Century Code is amended and reenacted as follows:

k. Service performed for a private for-profit person or entity by an individual as a landman if substantially all remuneration, including payment on the basis of a daily rate, paid in cash or otherwise for the performance of the service is directly related to the completion by the individual of the specific tasks contracted for rather than to the number of hours worked by the individual, and the services are performed under a written contract between the individual and the person for whom the services are performed which provides that the individual is to be treated as an independent contractor and not as an employee with respect to the services provided under the contract. For purposes of this subdivision, "landman" means a land professional who has been engaged primarily in:

- (1) Negotiating the acquisition or divestiture of mineral rights;
- (2) Negotiating business agreements that provide for the exploration for or development of minerals;
- (3) Determining ownership of minerals through research of public and private records;
- (4) Reviewing the status of title, curing title defects, and otherwise reducing title risk associated with ownership of minerals;
- (5) Managing rights or obligations derived from ownership of interests and minerals; or
- (6) Activities to secure the unitization or pooling of interests in minerals.

**SECTION 2. AMENDMENT.** Subdivision b of subsection 2 of section 52-04-07 of the North Dakota Century Code is amended and reenacted as follows:

- b. With benefits paid to an individual who ~~either~~:

- (1) Left the employment of the base-period employer voluntarily without good cause or with good cause not involving fault on the part of the base-period employer; ~~or~~
- (2) ~~Who was~~Was discharged from employment by the base-period employer for misconduct; ~~or~~
- (3) Was separated from employment with the most recent employer for reasons directly attributable to domestic violence or sexual assault.

**SECTION 3. AMENDMENT.** Subsection 1 of section 52-06-02 of the North Dakota Century Code is amended and reenacted as follows:

1. a. For the week in which the individual has left the individual's most recent employment voluntarily without good cause attributable to the employer, and thereafter until such time as the individual:
  - ~~a.~~ (1) Can demonstrate that the individual has earned remuneration for personal services in employment from and after the date of the unemployment compensation claim filing, equivalent to at least eight times the individual's weekly benefit amount as determined under section 52-06-04; and
  - ~~b.~~ (2) Has not left the individual's most recent employment under disqualifying circumstances.
- b. A temporary employee of a temporary help firm is deemed to have left employment voluntarily if the employee does not contact the temporary help firm for reassignment before filing for benefits. Failure to contact the temporary help firm is not deemed a voluntary leaving of employment unless the claimant was advised of the obligation to contact the temporary help firm upon completion of an assignment and advised that unemployment benefits may be denied for failure to contact the temporary help firm. As used in this subsection, "temporary employee" means an employee assigned to work for a client of a temporary help firm; and "temporary help firm" means a firm that hires that firm's own employees and assigns these employees to a client to support or supplement the client's workforce in a work situation such as employee absence, temporary skill shortage, seasonal workload, a special assignment, and a special project.
- c. This subsection does not apply if job service North Dakota determines that the individual in an active claim filing status accepted work which the individual could have refused with good cause under section 52-06-36 and terminated such employment with the same good cause and within the first ten weeks after starting work.
- d. This subsection does not apply if the individual left employment or remains away from employment following illness or injury upon a physician's written notice or order; no benefits may be paid under this exception unless the employee has notified the employer of the physician's requirement and has offered service for suitable work to the employer upon the individual's capability of returning to employment. This exception does not apply unless the individual's capability of returning to employment and offer of service for suitable work to the employer occurs within sixty days of the last day of work. However, the cost of any benefits

paid under this exception may not be charged against the account of the employer, other than a reimbursing employer, from whom the individual became separated as a result of the illness or injury. Job service North Dakota may request and designate a licensed physician to provide a second opinion regarding the claimant's qualification; however, no individual may be charged fees of any kind for the cost of such second opinion.

- e. This subsection does not apply if the individual left the most recent employment because of an injury or illness caused or aggravated by the employment; no benefits may be paid under this exception unless the individual leaves employment upon a physician's written notice or order, the individual has notified the employer of the physician's requirement, and there is no reasonable alternative but to leave employment.
- f. For the purpose of this subsection, an individual who left the most recent employment in anticipation of discharge or layoff must be deemed to have left employment voluntarily and without good cause attributable to the employer.
- g. For the purpose of this subsection, "most recent employment" means employment with any employer for whom the claimant last worked and voluntarily quit without good cause attributable to the employer or with any employer, in insured work, for whom the claimant last worked and earned wages equal to or exceeding eight times the individual's weekly benefit amount.
- h. This subsection does not apply if the individual leaves work which is two hundred road miles [321.87 kilometers] or more, as measured on a one-way basis, from the individual's home to accept work which is less than two hundred road miles [321.87 kilometers] from the individual's home provided the work is a bona fide job offer with a reasonable expectation of continued employment.
- i. This subsection does not apply if the individual voluntarily leaves most recent employment to accept a bona fide job offer with a base-period employer who laid off the individual and with whom the individual has a demonstrated job attachment. For the purposes of this exception, "demonstrated job attachment" requires earnings in each of six months during the five calendar quarters before the calendar quarter in which the individual files the claim for benefits.
- j. (1) This subsection does not apply if the reason for separation from the individual's employment is directly attributable to domestic violence or sexual assault that is verified by documentation submitted to job service North Dakota which substantiates the individual's reason for separation from the most recent employment and such continued employment would jeopardize the safety of the individual or of the individual's spouse, parent, or minor child. After receiving a claim for unemployment insurance benefits for which the individual identifies domestic violence or sexual assault as the reason for separation, job service North Dakota shall notify the most recent employer of the reason for separation provided by the individual.  
  
(2) For purposes of this subdivision, documentation includes:

- (a) A court order, protection order, restraining order, or other record filed with a court;
  - (b) A police or law enforcement record;
  - (c) A medical record indicating domestic violence or sexual assault; or
  - (d) A written affidavit provided by an individual who has assisted the claimant in dealing with the domestic violence or sexual assault and who is a:
    - [1] Licensed counselor;
    - [2] Licensed social worker;
    - [3] Member of the clergy;
    - [4] Director or domestic violence advocate at a domestic violence sexual assault organization as defined in section 14-07.1-01; or
    - [5] Licensed attorney.
- (3) Documentation must be received by job service North Dakota within fourteen calendar days from the date the individual files a claim for unemployment insurance benefits after separating from employment for reasons directly attributable to domestic violence or sexual assault.
- (4) A false statement of domestic violence or sexual assault in a claim for unemployment insurance benefits is subject to subsection 8 and section 52-06-40.

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

Approved April 26, 2011  
Filed April 26, 2011

## CHAPTER 376

### SENATE BILL NO. 2056

(Legislative Management)  
(Workforce Committee)

AN ACT to amend and reenact subsection 3 of section 52-02.1-01 and sections 52-08-10 and 54-60-17 of the North Dakota Century Code, relating to the new jobs training program, workforce training program, and operation intern program; and to declare an emergency.

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

<sup>126</sup> **SECTION 1. AMENDMENT.** Subsection 3 of section 52-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Community" means the city or county in which an eligible primary sector business is or will be located or a local development corporation, community organization, institution of higher education that is assigned primary responsibility for workforce training under section 52-08-08, or any other group the interest of which is in the economic growth of the area.

<sup>127</sup> **SECTION 2. AMENDMENT.** Section 52-08-10 of the North Dakota Century Code is amended and reenacted as follows:

#### **52-08-10. Preparation of business plan - Revolving loans.**

Subject to state board of higher education policies, the president of an institution of higher education that is assigned primary responsibility for workforce training shall prepare an annual business plan that must include provisions for use of the training capacity of the tribal colleges within the designated region, in consultation with the workforce training board. The business plan may include participation as a community under the new jobs training program under chapter 52-02.1. The workforce training board shall approve the business plan and make recommendations for funding of the business plan to the state board of higher education. Any state funds received under this program by the institutions of higher education assigned primary responsibility for workforce training must be used for business and customized training activities. The state board of higher education may establish for each institution of higher education assigned primary responsibility for workforce training a revolving loan fund for workforce training program startups using the borrowing authority provided in section 15-10-16.1.

**SECTION 3. AMENDMENT.** Section 54-60-17 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>126</sup> Section 52-02.1-01 was also amended by section 5 of House Bill No. 1016, chapter 16.

<sup>127</sup> Section 52-08-10 was also amended by section 6 of House Bill No. 1016, chapter 16.



**54-60-17. Division of workforce development - Internships, apprenticeships, and work experience opportunities.**

The division of workforce development shall administer a program to increase use of internships, apprenticeships, and work experience opportunities for higher education students and high school students enrolled in grade eleven or twelve. The primary focus of this program must be higher education internships in target industries. This program shall provide services to employers, communities, and business organizations to increase internship, apprenticeship, and work experience opportunities. The department shall maintain records of the number of internship, apprenticeship, and work experience opportunities subsidized within each funding recipient which shall then constitute a base level for that funding recipient. ~~The department in each subsequent biennium may only subsidize new or expanded internship, apprenticeship, and work experience opportunities above the base level for funding recipients.~~

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

Approved May 17, 2011  
Filed May 17, 2011

# SPORTS AND AMUSEMENTS

## CHAPTER 377

### SENATE BILL NO. 2286

(Senators Sorvaag, Miller)  
(Representative Boehning)

AN ACT to amend and reenact sections 53-01-02, 53-01-07, and 53-01-09 of the North Dakota Century Code, relating to the duties of the state commissioner of combative sports.

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

**SECTION 1. AMENDMENT.** Section 53-01-02 of the North Dakota Century Code is amended and reenacted as follows:

**53-01-02. Administration by secretary of state - Appointment of athletic advisory board and mixed fighting style advisory board commission of combative sports.**

The secretary of state shall act as state ~~athletic~~ commissioner of combative sports and administer this chapter. The secretary of state may appoint ~~an athletic advisory board~~ a commission of combative sports to assist and advise the secretary of state in matters relating to the regulation of boxing, kickboxing, mixed fighting style competition, and sparring. ~~The secretary of state also may appoint a mixed fighting style advisory board whose members may include one or more members of the athletic advisory board.~~ The secretary of state shall define the duties of ~~each board~~ the commission. ~~Board~~ Commission members are not entitled to compensation, except for reimbursement for actual and necessary expenses at the same rate as allowed state employees incurred in performing their official duties.

**SECTION 2. AMENDMENT.** Section 53-01-07 of the North Dakota Century Code is amended and reenacted as follows:

**53-01-07. Duties of state ~~athletic~~ commissioner of combative sports.**

The secretary of state shall supervise all boxing, kickboxing, mixed fighting style competitions, or sparring exhibitions held in the state and may:

1. Adopt at any time, combined rules governing the conduct of boxing, kickboxing, mixed fighting style competitions, and sparring exhibitions. In lieu of adopting combined rules the secretary of state may regulate the conduct of any boxing, kickboxing, mixed fighting style, or sparring match, competition, or exhibition through the use of the most recent uniform rules of boxing and the unified rules of mixed martial arts published by the association of boxing commissions.
2. Establish license fees for all boxers, kickboxers, mixed style fighters, boxing, kickboxing, and mixed fighting style competition promoters, managers, judges,

timekeepers, cornerpersons, knockdown counters, matchmakers, and referees or other participants.

3. Establish a fee based on the percentage of gross revenues from any boxing, kickboxing, mixed fighting style competition, or sparring exhibition held in this state to pay for the expenses of members of the ~~athletic advisory board or the mixed fighting style advisory board~~commission of combative sports. A fee established under this subsection may not exceed three percent of the gross revenues of the exhibition from any and all sources including cable television and pay-per-view telecasts of the event, exclusive of any federal tax thereon, but in no event may the fee be less than five hundred dollars.

**SECTION 3. AMENDMENT.** Section 53-01-09 of the North Dakota Century Code is amended and reenacted as follows:

**53-01-09. Fees paid into special fund - Continuing appropriation.**

All fees collected by the secretary of state pursuant to this chapter must be deposited in a special fund maintained in the state treasury. All money deposited in the fund is appropriated as a continuing appropriation to the secretary of state for administering this chapter and for the compensation and expenses of members of the ~~athletic advisory board and the mixed fighting style advisory board~~commission of combative sports.

Approved April 20, 2011  
Filed April 20, 2011

## CHAPTER 378

### SENATE BILL NO. 2042

(Legislative Management)  
(Judiciary Committee)

AN ACT to amend and reenact subsection 1 of section 53-06.1-01 and sections 53-06.1-11, 53-06.1-12, and 53-06.1-12.3 of the North Dakota Century Code, relating to consolidation of gaming taxes and allowable expenses; and to provide for a legislative management study.

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

<sup>128</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 53-06.1-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Adjusted gross proceeds" means gross proceeds less cash prizes, cost of merchandise prizes, ~~bingo cards excise tax, pull tab excise tax, gaming tax,~~ and federal excise tax imposed under section 4401 of the Internal Revenue Code [26 U.S.C. 4401].

**SECTION 2. AMENDMENT.** Section 53-06.1-11 of the North Dakota Century Code is amended and reenacted as follows:

#### **53-06.1-11. Gross proceeds - Allowable expenses - Rent limits.**

1. All money received from games must be accounted for according to the gaming rules. Gaming activity for a quarter must be reported on a tax return form prescribed by the attorney general. Unless otherwise authorized by the attorney general, the purchase price of a merchandise prize must be paid from a gaming bank account by check. No check drawn from a gaming or trust bank account may be payable to "cash" or a fictitious payee. A cash prize that exceeds an amount set by rule must be accounted for by a receipt prescribed by the gaming rules.
2. Allowable expenses may be deducted from adjusted gross proceeds. The allowable expense limit is ~~fifty onesixty~~ percent of the ~~first two hundred thousand dollars~~ of adjusted gross proceeds per quarter and ~~forty five percent~~ of the ~~adjusted gross proceeds in excess of two hundred thousand dollars per quarter.~~ In addition, an organization may deduct as an allowable expense:
  - a. ~~Two and one-half percent of the gross proceeds of pull tabs.~~
  - b. ~~Capital expenditures for security or video surveillance equipment used for controlling games if the equipment is required by section 53-06.1-10 or authorized by rule, and it is approved by the attorney general.~~
  - c. ~~If an organization's total actual expenses exceed the allowable expenses provided by this subsection, the organization may also deduct the~~

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<sup>128</sup> Section 53-06.1-01 was also amended by section 1 of House Bill No. 1380, chapter 379.

~~expenses up to two additional percent of the first two hundred thousand dollars of adjusted gross proceeds per quarter.~~

3. Cash shorts incurred in games and interest and penalty are classified as expenses.
4. For a site where bingo is conducted:
  - a. ~~Except under subdivision c, if~~ bingo is the primary game, the monthly rent must be reasonable.
  - b. If bingo is not the primary game, but is conducted with twenty-one, paddlewheels, or pull tabs, no additional rent is allowed.
  - c. ~~If bingo is conducted through a dispensing device and no other game is conducted, the monthly rent may not exceed two hundred seventy-five dollars.~~
5. For a site where bingo is not the primary game:
  - a. If twenty-one or paddlewheels is conducted, the monthly rent may not exceed two hundred dollars multiplied by the necessary number of tables based on criteria prescribed by gaming rule. For each twenty-one table with a wager greater than five dollars, an additional amount up to one hundred dollars may be added to the monthly rent. If pull tabs is also conducted involving a jar bar or dispensing device, but not both, the monthly rent for pull tabs may not exceed an additional one hundred seventy-five dollars. If pull tabs is conducted involving both a jar bar and dispensing device, the monthly rent for pull tabs may not exceed an additional two hundred dollars.
  - b. If twenty-one and paddlewheels are not conducted but pull tabs is conducted involving a jar bar or dispensing device, but not both, the monthly rent may not exceed two hundred seventy-five dollars. If pull tabs is conducted involving both a jar bar and dispensing device, the monthly rent for pull tabs may not exceed three hundred dollars.

**SECTION 3. AMENDMENT.** Section 53-06.1-12 of the North Dakota Century Code is amended and reenacted as follows:

**53-06.1-12. Gaming and ~~excise taxes~~ - Exception tax - Deposits and allocations.**

1. A gaming tax is imposed on the total ~~adjusted gross proceeds earned~~received by a licensed organization in a quarter and it must be computed and paid to the attorney general on a quarterly basis on the tax return. This tax must be paid from adjusted gross proceeds and is not part of the allowable expenses. The tax rates are:
  - a. ~~On adjusted gross proceeds not exceeding two hundred thousand dollars, a tax of five percent.~~
  - b. ~~On adjusted gross proceeds exceeding two hundred thousand dollars but not exceeding four hundred thousand dollars, a tax of ten percent.~~

- e. ~~On adjusted gross proceeds exceeding four hundred thousand dollars but not exceeding six hundred thousand dollars, a tax of fifteen percent.~~
  - d. ~~On adjusted gross proceeds exceeding six hundred thousand dollars, a tax of twenty percent.~~
2. ~~Except as provided in subsection 3, in addition to any other tax provided by law and in place of sales or use taxes, there is imposed on a licensed organization an excise tax of three percent on the gross proceeds from the sale at retail of pull tabs and three percent on the gross proceeds from the sale at retail of bingo cards to final users. This includes pull tabs or bingo cards provided to a player in exchange for redeemed winning pull tabs or bingo cards.~~ rate for a licensed organization with gross proceeds:
- a. Not exceeding five hundred thousand dollars is one percent of gross proceeds.
  - b. Exceeding five hundred thousand dollars but not exceeding one million dollars is one and one-half percent of gross proceeds.
  - c. Exceeding one million dollars but not exceeding one million five hundred thousand dollars is two percent of gross proceeds.
  - d. Exceeding one million five hundred thousand dollars is two and one-half percent of gross proceeds.
2. The tax must be paid to the attorney general at the time tax returns are filed.
3. ~~For organizations whose gross proceeds of pull tabs do not exceed four thousand dollars per calendar quarter, no excise tax may be imposed on the gross proceeds from the sale at retail of pull tabs to final users.~~
4. Except as provided in subsection 54, the attorney general shall deposit gaming and excise taxes, monetary fines, and interest and penalties collected in the general fund in the state treasury.
- ~~5-4.~~ The attorney general shall deposit ~~three~~six percent of the total taxes, less refunds, collected under this section into a gaming and excise tax allocation fund. Pursuant to legislative appropriation, moneys in the fund must be distributed quarterly to cities and counties in proportion to the taxes collected under this section from licensed organizations conducting games within each city, for sites within city limits, or within each county, for sites outside city limits. If a city or county allocation under this subsection is less than two hundred dollars, that city or county is not entitled to receive a payment for the quarter and the undistributed amount must be included in the total amount to be distributed to other cities and counties for the quarter.

**SECTION 4. AMENDMENT.** Section 53-06.1-12.3 of the North Dakota Century Code is amended and reenacted as follows:

**53-06.1-12.3. Interest, penalty, and estimated tax.**

1. Assessment of interest. If a licensed organization does not pay tax due by the original date of a tax return, or if additional tax is due based on an audit or math verification of the return and it is not paid by the original due date of the return, the organization shall pay interest on the tax at the rate of twelve

percent per annum computed from the original due date of the return through the date the tax is paid.

2. Assessment of penalty. If a licensed organization does not pay tax due on a tax return by the original or extended due date of the return, or if additional tax is due based on an audit or math verification of the return and it is not paid by the original or extended due date of the return, the organization shall pay a penalty of five percent of the tax, or twenty-five dollars, whichever is greater. If an organization does not file a tax return by the original or extended due date of the return, the organization shall pay a penalty of five percent of the tax, or twenty-five dollars, whichever is greater, for each month or fraction of a month during which the return is not filed, not exceeding a total of twenty-five percent.
3. The attorney general may require a licensed organization to make monthly estimated gaming ~~and excise~~ tax payments if the attorney general determines that the organization is in poor financial condition. If an organization fails to pay any tax or estimated tax, interest, or penalty by the original due date or date set by the attorney general, the attorney general may bring court action to collect it and may suspend the organization's license. The attorney general may for good cause waive all or part of any interest or penalty and may waive any minimal tax.
4. If a licensed organization has failed to file a tax return, has been notified by the attorney general of the delinquency, and refuses or neglects within thirty days after the notice to file a proper return, the attorney general shall determine the adjusted gross proceeds and gaming ~~and excise taxes~~~~tax~~ due according to the best information available and assess the ~~taxes~~~~tax~~ at not more than double the amount. Interest and penalty also must be assessed.
5. The attorney general may authorize a licensed organization to pay any delinquent tax, interest, or penalty on an installment plan and may set any qualifying conditions.

**SECTION 5. LEGISLATIVE MANAGEMENT STUDY - CHARITABLE GAMING ORGANIZATION ELIGIBILITY.** During the 2011-12 interim, the legislative management shall consider studying the eligibility requirements for the veterans', charitable, educational, religious, fraternal, civic and service, public safety, and public-spirited organizations that conduct charitable gaming. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

Approved May 17, 2011  
Filed May 17, 2011

## CHAPTER 379

### HOUSE BILL NO. 1380

(Representative Keiser)

AN ACT to amend and reenact subsection 7 of section 53-06.1-01 of the North Dakota Century Code, relating to the definition of eligible organization for charitable gaming purposes.

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

<sup>129</sup> **SECTION 1. AMENDMENT.** Subsection 7 of section 53-06.1-01 of the North Dakota Century Code is amended and reenacted as follows:

7. "Eligible organization" means a veterans, charitable, educational, religious, fraternal, civic and service, public safety, or public-spirited organization domiciled in North Dakota or authorized by the secretary of state as a foreign corporation under chapter 10-33, incorporated as a nonprofit organization, and which has been regularly and actively fulfilling its primary purpose within this state during the two immediately preceding years. However, an educational organization does not need to be incorporated or be in existence for two years. An organization's primary purpose may not involve the conduct of games. The organization may be issued a license by the attorney general. For purposes of this section, a foreign corporation authorized under chapter 10-33 is not an eligible organization unless authorized to conduct a raffle under chapter 20.1-04 or 20.1-08 and may not conduct a game other than a raffle under chapter 20.1-04 or 20.1-08.

Approved April 4, 2011  
Filed April 4, 2011

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<sup>129</sup> Section 53-06.1-01 was also amended by section 1 of Senate Bill No. 2042, chapter 378.



## CHAPTER 380

### HOUSE BILL NO. 1093

(Judiciary Committee)

(At the request of the North Dakota Racing Commission)

AN ACT to amend and reenact subsections 3 and 6 of section 53-06.2-11 of the North Dakota Century Code, relating to payment of breakage to and operating expenses of the racing commission.

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

**SECTION 1. AMENDMENT.** Subsections 3 and 6 of section 53-06.2-11 of the North Dakota Century Code are amended and reenacted as follows:

3. For all pari-mutuel wagering the licensee shall pay to the commission the amount due for all unclaimed tickets and all breakage on the first twenty million dollars wagered with each service provider, of which twenty percent is to be deposited in the racing promotion fund, thirty percent is to be deposited in the breeders' fund, and fifty percent is to be deposited in the purse fund.
6. The commission shall deposit the moneys received pursuant to subsections 1, 2, and 3 and from the North Dakota horse racing foundation pursuant to subsection 5 of section 53-06.2-05 in the breeders' fund, the purse fund, and the racing promotion fund. Moneys, and any earnings on the moneys, in the breeders' fund, purse fund, and racing promotion fund are appropriated to the commission on a continuing basis to carry out the purposes of those funds under this chapter and must be administered and disbursed in accordance with rules adopted by the commission. The commission may not transfer money among the funds. The commission shall distribute awards and payment supplements from the breeders' fund in the same calendar year the money was earned by the recipient. The commission shall distribute payments awarded to qualified owners and breeders from the breeders' fund without requiring owners and breeders to apply for the payments. The commission; ~~upon approval of the emergency commission,~~ may receive ~~no more than~~ twenty-five thousand dollars per year or twenty-five percent of per year, whichever is greater, from the racing promotion fund for the payment of the commission's operating expenses.

Approved April 26, 2011

Filed April 26, 2011

## CHAPTER 381

### SENATE BILL NO. 2295

(Senators Olafson, Cook)  
(Representatives Frantsvog, Keiser, Porter)

AN ACT to amend and reenact sections 53-08-01 and 53-08-02 and subsection 2 of section 53-08-03 of the North Dakota Century Code, relating to recreational immunity.

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

**SECTION 1. AMENDMENT.** Section 53-08-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **53-08-01. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Charge" means the amount of money asked in return for an invitation to enter or go upon the land. "Charge" does not include vehicle, parking, shelter, or other similar fees required by any public entity.
2. "Commercial purpose" means a deliberative decision of an owner to invite or permit the use of the owner's property for normal business transactions, including the buying and selling of goods and services. The term includes any decision of an owner to invite members of the public onto the premises for recreational purposes as a means of encouraging business transactions or directly improving the owner's commercial activities other than through good will. "Commercial purpose" does not include the operation of public lands by a public entity except any direct activity for which there is a charge for goods or services.
3. "Land" includes all public and private land, roads, water, watercourses, and ways and buildings, structures, and machinery or equipment thereon.
- ~~3.4.~~ "Owner" includes tenant, lessee, occupant, or person in control of the premises.
- ~~4.5.~~ "Recreational purposes" includes any activity engaged in for the purpose of exercise, relaxation, pleasure, or education.

**SECTION 2. AMENDMENT.** Section 53-08-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **53-08-02. Duty of care of ~~landowner~~owner.**

1. Subject to the provisions of section 53-08-05, an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes, regardless of the location and nature of the recreational purposes and whether the entry or use by others is for their own recreational purposes or is directly derived from the recreational purposes of other persons, or to

give any warning of a dangerous condition, use, structure, or activity on such premises to persons entering for such purposes.

2. This section does not apply to:

- a. A person that enters land to provide goods or services at the request of, and at the direction or under the control of, an owner; or
- b. An owner engaged in a for-profit business venture that directly or indirectly invites members of the public onto the premises for commercial purposes or during normal periods of commercial activity in which members of the public are invited.

**SECTION 3. AMENDMENT.** Subsection 2 of section 53-08-03 of the North Dakota Century Code is amended and reenacted as follows:

2. Confer upon such persons, or any other person whose presence on the premises is directly derived from those recreational purposes, the legal status of an invitee or licensee to whom a duty of care is owed other than a person that enters land to provide goods or services at the request of, and at the direction or under the control of, the owner; or

Approved April 26, 2011  
Filed April 26, 2011

## CHAPTER 382

### HOUSE BILL NO. 1142

(Representatives DeKrey, Drovdal, Kaldor)  
(Senators Klein, Uglem, O'Connell)

AN ACT to create and enact a new chapter to title 53 of the North Dakota Century Code, relating to registered agritourism activity liability.

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

**SECTION 1.** A new chapter to title 53 of the North Dakota Century Code is created and enacted as follows:

##### **Definitions.**

In this chapter, unless the context otherwise requires:

1. "Agritourism activity" means any activity, including farming and ranching activities, or any historic, cultural, or natural attraction, that is viewed or enjoyed by members of the general public, for educational, recreational, or entertainment purposes, regardless of whether the member of the general public pays to participate in the activity or to view or enjoy the attraction.
2. "Inherent risk" means:
  - a. Any condition or danger that is an integral part of agritourism, including:
    - (1) Surface and subsurface conditions of the land;
    - (2) Surface and subsurface conditions of the water;
    - (3) Natural conditions of land, vegetation, and water;
    - (4) The behavior of wild or domestic animals; and
    - (5) Structures and equipment ordinarily used in farming or ranching; and
  - b. The potential of a participant to act in a negligent manner, including failing to follow instructions or failing to exercise reasonable caution while engaging in an agritourism activity.
3. "Participant" means a member of the general public who engages in a registered agritourism activity.
4. "Registered agritourism activity" means an agritourism activity that is registered with the division of tourism.
5. "Registered agritourism operator" means a person that is registered with the division of tourism and that is engaged in the provision of a registered agritourism activity.

**Registration - Requirements.**

1. A person may become a registered agritourism operator by registering with the division of tourism.
2. The registration must include a description of the agritourism activity that the person provides or intends to provide.
3. The division of tourism may not impose any fees or other charges to register agritourism operators.
4. A registration under this section is effective for five years.

**Registered agritourism operators - Maintenance of list.**

The division of tourism shall:

1. Maintain a list of all registered agritourism operators; and
2. Maintain a list of all registered agritourism activities.

**Notice regarding liability - Requirements.**

A registered agritourism operator shall post in a conspicuous location on the premises and include in each written contract pertaining to an individual's participation in agritourism a notice indicating that under the laws of this state, the registered agritourism operator is not liable for any injury to or for the death of a participant if the injury or death results from an inherent risk.

**Participant in agritourism activity - Assumption of risk.**

Except as otherwise provided, a participant assumes all inherent risks of agritourism. In any action for damages arising from an individual's participation in agritourism, a registered agritourism operator may plead assumption of risk by the participant as an affirmative defense.

**Liability of registered agritourism operator.**

This chapter does not prevent or limit the liability of a registered agritourism operator if the operator:

1. Injures a participant willfully or through conduct that amounts to gross negligence; or
2. a. Has actual knowledge of or should have known of:
  - (1) A dangerous condition on property, including in a facility, at which a registered agritourism activity occurs;
  - (2) A dangerous condition with respect to equipment used in the registered agritourism activity; or
  - (3) The dangerous propensity of a particular animal used in the registered agritourism activity;

- b. Does not exercise ordinary care to remedy the danger or to warn a participant of the danger; and
- c. The danger causes injury to the participant or contributes to the injury of the participant.

**Division of tourism - Copy of law - Provision to registered agritourism operator.**

The division of tourism shall provide a copy of the applicable law to each person that registers or reregisters as an agritourism operator.

Approved April 27, 2011  
Filed April 27, 2011

# STATE GOVERNMENT

## CHAPTER 383

### SENATE BILL NO. 2204

(Senators Sitte, Christmann, Wanzek)  
(Representatives Kasper, Schmidt, Wrangham)

AN ACT to prohibit state funding of the northern plains national heritage area.

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

#### SECTION 1.

**Northern plains national heritage area - Use of state funds and property prohibited unless approved by legislative assembly.**

State funds may not be expended or transferred from state agencies to match federal moneys for the northern plains national heritage area or any similar or successor designated areas without the approval of the legislative assembly. State lands, water, property, or facilities may not be included in the designated northern plains national heritage area or any similar or successor designated areas without the approval of the legislative assembly. No further lands, water, property, or facilities may be designated as heritage areas within this state without the approval of the legislative assembly.

Approved April 19, 2011  
Filed April 19, 2011

## CHAPTER 384

### HOUSE BILL NO. 1097

(Government and Veterans Affairs Committee)  
(At the request of the State Historical Society of North Dakota)

AN ACT to amend and reenact section 54-02-02 of the North Dakota Century Code, relating to the state flag.

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

**SECTION 1. AMENDMENT.** Section 54-02-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **54-02-02. State flag.**

The flag of North Dakota must consist of a field of blue silk or material which will withstand the elements four feet four inches [132.08 centimeters] on the pike and five feet six inches [167.64 centimeters] on the fly, with a border of knotted yellow fringe two and one-half inches [6.35 centimeters] wide. On each side of said flag in the center thereof, must be embroidered or stamped an eagle with outspread wings and with opened beak. The eagle must be three feet four inches [101.6 centimeters] from tip to tip of wing, and one foot ten inches [55.88 centimeters] from top of head to bottom of olive branch hereinafter described. The left foot of the eagle shall grasp a sheaf of arrows, the right foot shall grasp an olive branch showing three red berries. On the breast of the eagle must be displayed a shield, the lower part showing seven red and six white stripes placed alternately. Through the open beak of the eagle must pass a scroll bearing the words "E Pluribus Unum". Beneath the eagle there must be a scroll on which must be borne the words "North Dakota". Over the scroll carried through the eagle's beak must be shown thirteen five-pointed stars, the whole device being surmounted by a sunburst. The flag must conform in all respects as to color, form, size, and device with the regimental flag carried by the First North Dakota Infantry in the Spanish American War and Philippine Insurrection, except in the words shown on the scroll below the eagle. To ensure historical accuracy, reproductions of the flag of North Dakota must adhere to the official design and industry color chart codes provided by the state historical society. A description in writing of the flag must be made available to the public by the state historical society. Flags purchased by a state entity or a political subdivision must substantially meet the requirements of this section. This section does not apply to the purchase of an item that is not a flag but which portrays a likeness of the flag of North Dakota, for example, a miniature flag, food, clothing, a lapel pin, a paper product, or other nonflag item.

Approved April 8, 2011  
Filed April 11, 2011



## CHAPTER 385

### HOUSE BILL NO. 1346

(Representatives Heilman, Maragos, Sanford)  
(Senators J. Lee, Sorvaag, Nelson)

AN ACT to create and enact a new section to chapter 54-02 of the North Dakota Century Code, relating to the state Latin motto.

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

**SECTION 1.** A new section to chapter 54-02 of the North Dakota Century Code is created and enacted as follows:

#### **State Latin motto.**

"Serit ut alteri saeclo prosit" is the North Dakota state Latin motto. "One sows for the benefit of another age" is the English translation.

Approved April 8, 2011  
Filed April 11, 2011

## CHAPTER 386

### HOUSE BILL NO. 1219

(Representatives Froseth, Hatlestad, Kreidt)  
(Senator Krebsbach)

AN ACT to create and enact a new section to chapter 54-02 of the North Dakota Century Code, relating to the designation of the ladybug as the official state insect.

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

**SECTION 1.** A new section to chapter 54-02 of the North Dakota Century Code is created and enacted as follows:

#### **State insect.**

The convergent lady beetle, *hippodamia convergens*, commonly known as a ladybug, is the official insect of the state of North Dakota.

Approved March 15, 2011

Filed March 15, 2011

## **CHAPTER 387**

### **HOUSE BILL NO. 1261**

(Representatives Carlson, Belter, DeKrey, Kasper)  
(Senator Christmann)

AN ACT to repeal sections 54-03-19.1 and 54-03-19.2 of the North Dakota Century Code, relating to the legislative compensation commission.

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

**SECTION 1. REPEAL.** Sections 54-03-19.1 and 54-03-19.2 of the North Dakota Century Code are repealed.

Approved April 4, 2011  
Filed April 4, 2011

## CHAPTER 388

### SENATE BILL NO. 2169

(Senators Murphy, Lyson, Nodland, Schneider)  
(Representatives R. Kelsch, S. Meyer)

AN ACT to create and enact a new section to chapter 54-03 of the North Dakota Century Code, relating to audio recording of floor sessions of the legislative assembly.

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

**SECTION 1.** A new section to chapter 54-03 of the North Dakota Century Code is created and enacted as follows:

#### **Audio recording of floor sessions.**

The senate shall adopt rules regarding the recording of senate floor sessions and the house of representatives shall adopt rules regarding the recording of house floor sessions. The legislative council shall archive all audio recordings of floor sessions. Audio recordings of floor sessions are public records that must be open and accessible for inspection during reasonable office hours.

Approved April 26, 2011  
Filed April 26, 2011

## CHAPTER 389

### SENATE BILL NO. 2309

(Senators Sitte, Berry, Dever)  
(Representatives Kasper, Keiser, Ruby)

AN ACT to create and enact a new section to chapter 54-03 of the North Dakota Century Code, relating to federal health care reform legislation.

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

**SECTION 1.** A new section to chapter 54-03 of the North Dakota Century Code is created and enacted as follows:

##### **Federal health care reform law.**

1. The legislative assembly declares that the federal laws known as the Patient Protection and Affordable Care Act [Pub. L. 111-148] and the Health Care and Education Reconciliation Act of 2010 [Pub. L. 111-152] likely are not authorized by the United States Constitution and may violate its true meaning and intent as given by the founders and ratifiers.
2. The legislative assembly shall consider enacting any measure necessary to prevent the enforcement of the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 within this state.
3. No provision of the Patient Protection and Affordable Care Act or the Health Care and Education Reconciliation Act of 2010 may interfere with an individual's choice of a medical or insurance provider except as otherwise provided by the laws of this state.

Approved April 27, 2011  
Filed April 27, 2011

## CHAPTER 390

### HOUSE BILL NO. 1314

(Representatives Maragos, Glassheim)  
(Senators Andrist, Burckhard)

AN ACT to amend and reenact subdivision a of subsection 1 of section 54-05.1-03 and section 54-05.1-07 of the North Dakota Century Code, relating to a duplicate lobbyist badge and to a civil penalty for persons lobbying without registration with the secretary of state; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Subdivision a of subsection 1 of section 54-05.1-03 of the North Dakota Century Code is amended and reenacted as follows:

- a. Before engaging in any of the activities listed in section 54-05.1-02, an individual shall register with the secretary of state and receive a certificate of registration and a distinctive lobbyist identification badge that must be prominently worn by the lobbyist when engaged in any of the activities listed in section 54-05.1-02 while on the capitol grounds. In lieu of wearing the official badge provided by the secretary of state, a lobbyist may wear a reasonable reproduction of the official badge that contains the name of the lobbyist and any of the following: the word lobbyist, the registration number of the lobbyist, or the organization name of the lobbyist in characters no smaller than one-quarter inch [6.35 millimeters]. If a lobbyist's official badge is lost or destroyed, the lobbyist may obtain a duplicate badge by applying to the secretary of state and paying a fee of ten dollars.

**SECTION 2. AMENDMENT.** Section 54-05.1-07 of the North Dakota Century Code is amended and reenacted as follows:

#### 54-05.1-07. Penalty.

Any person who violates any provisions of this chapter is guilty of a class B misdemeanor except that a violation of section 54-05.1-02 or 54-05.1-03 is an infraction. Whether a person is subjected to criminal prosecution under this section, and in addition to the registration fee that may be assessed when the person submits the registration to the secretary of state, the person may be assessed a civil penalty by the secretary of state, following written notice to the person of an intent to assess the penalty, in an amount not to exceed two times the amount set forth in subdivision e of subsection 1 of section 54-05.1-03 which is chargeable to a lobbyist. Any civil penalty must be assessed and collected before a person is issued a certificate of registration. The assessment of a civil penalty may be appealed to the district court of the person's county of residence or Burleigh County, but only on the basis that the secretary of state's administrative determination that the person acted as a lobbyist when not registered as a lobbyist was clearly erroneous.

Approved April 19, 2011  
Filed April 19, 2011

## CHAPTER 391

### HOUSE BILL NO. 1098

(Government and Veterans Affairs Committee)  
(At the request of the Office of Management and Budget)

AN ACT to amend and reenact section 54-06-08.2 and subdivision c of subsection 1 of section 54-06-09 of the North Dakota Century Code, relating to the office of management and budget adopting and amending policies.

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

**SECTION 1. AMENDMENT.** Section 54-06-08.2 of the North Dakota Century Code is amended and reenacted as follows:

**54-06-08.2. Payment by credit or debit card or by electronic fund transfer - State credit card processor - Fees.**

1. A state agency, board, or commission, the judicial branch, or any political subdivision may accept payment by credit or debit card or by electronic fund transfer of any fee, interest, penalty, tax, or other payment that is due or collectible by the agency, board, or commission. The judicial branch may accept payment by credit or debit card or by electronic fund transfer for any fees, costs, or other assessments required or imposed under state law or court rule.
2. The Bank of North Dakota is the state credit card administrator for credit card transactions of state agencies, boards, or commissions. The Bank of North Dakota shall select a credit card processor or processors to provide credit card services to state agencies, boards, and commissions. All funds from credit card transactions must be deposited in the respective entity's account in the Bank of North Dakota.
3. Except as otherwise provided under section 20.1-03-32, ~~in accordance with rules adopted by the office of management and budget,~~ an executive branch agency may charge a fee to be added to a payment as a service charge for the acceptance of a payment made by a credit or debit card or an electronic fund transfer. ~~The office of management and budget shall adopt rules establishing the terms under which executive agencies may charge a service fee under this subsection. The Bank of North Dakota shall adopt rules establishing the terms under which executive agencies may charge a service fee under this subsection to be in compliance with a credit card company's rules and shall approve the amount that may be charged by an executive agency.~~

**SECTION 2. AMENDMENT.** Subdivision c of subsection 1 of section 54-06-09 of the North Dakota Century Code is amended and reenacted as follows:

- c. The director of the office of management and budget shall adopt ~~rules~~policies establishing mileage reimbursement for actual and necessary travel in the performance of official duty when the travel is by motor vehicle, the use of which is required by the employing entity. The director

shall amend the ~~rules~~policies when necessary to set reimbursement at the same rate as established by the United States general services administration for privately owned vehicles.

Approved March 29, 2011  
Filed March 29, 2011



## CHAPTER 392

### SENATE BILL NO. 2060

(Senators Lyson, Nodland, G. Lee)  
(Representatives DeKrey, D. Johnson, Klemin)

AN ACT to create and enact a new section to chapter 54-06 of the North Dakota Century Code, relating to honor guard leave for state employees.

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

**SECTION 1.** A new section to chapter 54-06 of the North Dakota Century Code is created and enacted as follows:

#### **Honor guard leave.**

Honor guard leave is an approved absence from work, with pay, of up to twenty-four working hours per calendar year for an employee to participate in an honor guard for a funeral service of a veteran. A governmental entity may grant a request for honor guard leave even if the absence of the employee might interfere with the normal operations of the agency. This section applies to each governmental entity that employs an individual in a position classified by human resource management services.

Approved April 20, 2011  
Filed April 20, 2011

## CHAPTER 393

### HOUSE BILL NO. 1355

(Representatives Beadle, Boehning, Klemin)  
(Senators Sitte, Sorvaag)

AN ACT to create and enact section 54-09-02.1 of the North Dakota Century Code, relating to certificates and certified copies issued by the secretary of state; and to amend and reenact sections 10-34-09, 43-07-13, 54-09-04, and 54-09-07 of the North Dakota Century Code, relating to the fees collected by the secretary of state from real estate investment trusts, fees collected by the secretary of state for certified copies, fees charged and collected by the secretary of state, and service of process on the secretary of state.

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

**SECTION 1. AMENDMENT.** Section 10-34-09 of the North Dakota Century Code is amended and reenacted as follows:

##### **10-34-09. Fees.**

The secretary of state shall charge and collect the following fees with respect to real estate investment trusts:

1. Filing a registration of a real estate investment trust, one hundred ten dollars.
2. Filing any amendment changing the registered agent or registered office, the fee provided in section 10-01.1-03.
3. Filing a renewal or amendment of registration of a real estate investment trust, forty dollars.
4. Issuing a certificate of good standing, ~~twenty five~~fifteen dollars.
5. Furnishing a certified copy of any record, instrument, or paper relating to a real estate investment trust, the fee provided in section 54-09-04 for copying a record and fifteen dollars for the certificate and affixing the seal thereto.

**SECTION 2. 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.**

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, revocations, 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 ~~sum of ten dollars~~fees prescribed in section 54-09-04. Such certified copy must be received in all courts and elsewhere as prima facie evidence of

~~the facts stated therein.~~ Any certificate or certified copy issued by the secretary of state under this section has the same force and effect as provided in section 54-09-02.1.

**SECTION 3.** Section 54-09-02.1 of the North Dakota Century Code is created and enacted as follows:

**54-09-02.1. Secretary of state - Certificates and certified copies to be received in evidence.**

1. All certificates issued by the secretary of state and all copies of records filed in accordance with this chapter or any other chapter, when certified by the secretary of state, may be taken and received in all courts, public offices, and official bodies as evidence of the facts stated.
2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to records filed by the secretary in accordance with this chapter or any other chapter which would not appear from a certified copy of any of the foregoing records or certificates, may be taken and received in all courts, public offices, and official bodies as evidence of the existence or nonexistence of the facts stated.
3. Any certificate or certified copy issued by the secretary of state under this section may be created and disseminated as an electronic record with the same force and effect as if produced in a paper form.

**SECTION 4. AMENDMENT.** Section 54-09-04 of the North Dakota Century Code is amended and reenacted as follows:

**54-09-04. Fees.**

The secretary of state, ~~unless otherwise provided by law,~~ shall charge and collect the following fees:

1. For a copy of any law, resolution, record, or other document or paper on file in the secretary of state's office, fifty cents per page.
2. ~~For~~ Unless otherwise provided by law, for affixing the signature of the secretary of state, certificate, or seal, or combination thereof to any document, ten dollars.
3. For filing a certificate of appointment of attorney, five dollars.
4. For searching records and archives of the state, five dollars. For the purposes of this section, a search of records conducted by the secretary of state for which a fee must be collected includes the following:
  - a. A search of a filed document that is active or archived, an archived index, or an index of business name changes to identify specific information to satisfy a request;
  - b. A search of any record for which written verification of the facts of the search is required; and
  - c. For every search of records when the request for the search is contained in a list compiled by the requester.

The secretary of state may provide, at no charge, information from publications or reference materials published or maintained by the secretary of state and verbal confirmation of any element of information maintained in a computer data base.

5. For filing any paper not otherwise provided for, ten dollars.
6. ~~For filing utility property transfers, five dollars, and issuing a certificate of filing, five dollars.~~
7. For filing any process, notice, or demand for service, the fee provided in section 10-01.1-03.
- ~~8-7.~~ For preparing any listing or compilation of any information recorded or filed in the office of the secretary of state, thirty-five dollars plus the actual cost for assembling and providing the information on the medium requested.

An individual required to file an oath of office with the secretary of state may not be charged for filing the oath of office, nor may a state or county officer be charged for filing any document with the secretary of state when acting in the officer's official capacity. All fees when collected must be paid by the secretary of state into the state treasury at the end of each month and placed to the credit of the state. Unless otherwise provided by law, the secretary of state shall retain a handling charge from filing fees tendered when a document submitted to the secretary of state under any law is rejected and not perfected. The handling charge is five dollars or fifty percent of the filing fee, whichever is greater, but may not exceed one hundred dollars.

If, upon due presentment, any check, draft, money order, or other form of lawful payment provisionally accepted in payment of any filing fee authorized to be charged and collected by the secretary of state, is not honored or paid, or if no lawful form of payment accompanies the filing, any record of credit or payment must be canceled or reversed as though no credit had been given or payment attempted and the filing or action is void. The secretary of state may return to the last-known address of the filer any record or document that was attempted to be filed or may retain as unfilled the record or document for a reasonable time to permit proper payment and filing.

This section does not apply to fees submitted for filing in, or information obtained from, the computerized central notice system, to the computerized Uniform Commercial Code central filing data base, or to the computerized statutory liens data base.

**SECTION 5. AMENDMENT.** Section 54-09-07 of the North Dakota Century Code is amended and reenacted as follows:

**54-09-07. Service of process on secretary of state if agent not found or if secretary of state appointed as agent for individual.**

If an agent other than the secretary of state has been appointed for receipt of service, but the affidavit of a sheriff or of an adult who is not a party to a proceeding establishes that diligent inquiry has been made and that personal service cannot be accomplished upon any registered agent, officer, or superintending, managing, or general agent of an entity, then the secretary of state may be deemed the agent of the entity for receiving service of process. Service on the secretary of state must be made as provided in section 10-01.1-13. Except as otherwise provided by law, if the secretary of state is appointed as agent for service of process for any individual under any provision of this code, then service on the secretary of state and the

responsibilities of the secretary of state with respect to the service shall be made or executed in the manner provided in section 10-01.1-13, to the extent practicable.

Approved April 19, 2011

Filed April 20, 2011

## CHAPTER 394

### HOUSE BILL NO. 1145

(Representatives Drovdal, Pietsch)  
(Senator Andrist)

AN ACT to amend and reenact section 54-10-14 of the North Dakota Century Code, relating to political subdivision reports in lieu of audits.

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

<sup>130</sup> **SECTION 1. AMENDMENT.** Section 54-10-14 of the North Dakota Century Code is amended and reenacted as follows:

#### **54-10-14. Political subdivisions - Audits - Fees - Alternative audits and reports.**

1. The state auditor shall audit the following political subdivisions once every two years, except as provided in this section or otherwise by law:
  - ~~1.~~ a. Counties.
  - ~~2.~~ b. Cities.
  - ~~3.~~ c. Park districts.
  - ~~4.~~ d. School districts.
  - ~~5.~~ e. Firefighters relief associations.
  - ~~6.~~ f. Airport authorities.
  - ~~7.~~ g. Public libraries.
  - ~~8.~~ h. Water resource districts.
  - ~~9.~~ i. Garrison Diversion Conservancy District.
  - ~~10.~~ j. Rural fire protection districts.
  - ~~11.~~ k. Special education districts.
  - ~~12.~~ l. Area career and technology centers.
  - ~~13.~~ m. Correction centers.
  - ~~14.~~ n. Recreation service districts.
  - ~~15.~~ o. Weed boards.

<sup>130</sup> Section 54-10-14 was also amended by section 27 of Senate Bill No. 2015, chapter 41.

- ~~16.~~ p. Irrigation districts.
- ~~17.~~ q. Rural ambulance service districts.
- ~~18.~~ r. Southwest water authority.
- ~~19.~~ s. Regional planning councils.
- ~~20.~~ t. Soil conservation districts.
2. The state auditor shall charge the political subdivision an amount equal to the fair value of the audit and any other services rendered. The fees must be deposited in the state auditor operating account. The state treasurer shall credit the state auditor operating account with the amount of interest earnings attributable to the deposits in that account. Expenses relating to political subdivision audits must be paid from the state auditor operating account, within the limits of legislative appropriation.
3. In lieu of conducting an audit every two years, the state auditor may require annual reports from school districts with less than one hundred enrolled students; cities with less than five hundred population; ~~park districts and soil conservation districts with less than two hundred thousand dollars of annual receipts;~~ and other political subdivisions subject to this section, or otherwise provided by law, with less than ~~one~~two hundred thousand dollars of annual receipts, excluding any federal funds passed through the political subdivision to another entity. If any federal agency performs or requires an audit of a political subdivision that receives federal funds to pass through to another entity, the political subdivision shall provide a copy to the state auditor upon request by the state auditor. The reports must contain the financial information required by the state auditor. The state auditor also may make any additional examination or audit determined necessary in addition to the annual report. When a report is not filed, the state auditor may charge the political subdivision an amount equal to the fair value of the additional examination or audit and any other services rendered. The state auditor may charge a political subdivision a fee not to exceed eighty dollars an hour for the costs of reviewing the annual report.
4. A political subdivision, at the option of its governing body, may be audited by a certified public accountant or licensed public accountant rather than by the state auditor. The public accountant shall comply with generally accepted government auditing standards for audits of political subdivisions. The report must be in the form and content required by the state auditor. The number of copies of the audit report requested by the state auditor must be filed with the state auditor when the public accountant delivers the audit report to the political subdivision. The state auditor shall review the audit report to determine if the report is in the required form and has the required content, and if the audit meets generally accepted government auditing standards. The state auditor also may periodically review the public accountant's workpapers to determine if the audit meets generally accepted government auditing standards. If the report is in the required form and has the required content, and the report and workpapers comply with generally accepted government auditing standards, the state auditor shall accept the audit report. The state auditor may charge the political subdivision a fee of up to eighty dollars an hour, but not to exceed five hundred dollars per review, for the related costs of reviewing the audit report and workpapers.

5. A political subdivision may not pay a public accountant for an audit until the state auditor has accepted the audit. However, a political subdivision may make progress payments to the public accountant. A political subdivision shall retain twenty percent of any progress payment until the audit report is accepted by the state auditor.
6. The state auditor may require the correction of any irregularities, objectionable accounting procedures, or illegal actions on the part of the governing board, officers, or employees of the political subdivision disclosed by the audit report or workpapers, and failure to make the corrections must result in audits being resumed by the state auditor until the irregularities, objectionable accounting procedures, or illegal actions are corrected.

Approved April 8, 2011  
Filed April 11, 2011



## CHAPTER 395

### HOUSE BILL NO. 1088

(Government and Veterans Affairs Committee)  
(At the request of the State Treasurer)

AN ACT to amend and reenact section 54-11-01 of the North Dakota Century Code, relating to duties of the state treasurer.

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

**SECTION 1. AMENDMENT.** Section 54-11-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **54-11-01. Duties and powers of state treasurer.**

The state treasurer:

1. Shall receive and safely keep all public moneys which must be deposited into the state treasury and pay out the same as directed by law.
2. Shall collect a record for each deposit of money into the treasury. The record must show the amount, the source from which the money accrued, and the funds into which it is paid. The records must be numbered in order.
3. Shall pay warrants drawn by the office of management and budget and signed by the state auditor and state treasurer out of the funds upon which they are drawn and in the order in which they are presented.
4. Shall keep an account of all moneys received and disbursed.
5. Shall keep separate accounts of the different funds.
6. Shall keep a record of all revenues and expenditures of state agencies and all moneys received and disbursed by the treasurer in accordance with the requirements of the state's central accounting system.
7. Shall receive in payment of public dues the warrants drawn by the office of management and budget and signed by the state auditor and state treasurer in conformity with law.
8. Shall redeem warrants drawn by the office of management and budget and signed by the state auditor and state treasurer in conformity with law, if there is money in the treasury appropriated for that purpose.
9. Shall maintain a report of the payment of warrants during the month. The report must show:
  - a. The date and number of each warrant;
  - b. The fund out of which each was paid; and

- c. The balance in cash on hand in the treasury to the credit of each fund.
10. Within ninety days of the beginning of each fiscal year, shall provide a report to the budget section of the legislative assembly of all warrants and checks outstanding for more than ninety days and less than three years.
11. At the request of either house of the legislative assembly, or of any committee thereof, shall give information in writing as to the condition of the treasury, or upon any subject relating to the duties of office.
- ~~44-12.~~ Shall submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04. In addition to any requirements established pursuant to section 54-06-04, the report must show the exact balance in the treasury to the credit of the state. The report also must show in detail the receipts and disbursements, together with a summary thereof, the balances in the various funds at the beginning and ending of the biennium, and also must show where the funds of the state are deposited. It must be certified by the state treasurer and approved by the governor.
- ~~42-13.~~ Shall authenticate with the official state seal all writings and papers issued from the treasurer's office.
- ~~43-14.~~ Shall keep and disburse all moneys belonging to the state in the manner provided by law.
- ~~44-15.~~ Shall keep books of the state treasurer open at all times for the inspection of the governor, the state auditor, the commissioner of financial institutions, the office of management and budget, and any committee appointed to examine them by either house of the legislative assembly.
- ~~45-16.~~ Unless otherwise specified by law, shall credit all income earned on the deposit or investment of all state moneys to the state's general fund. This subsection does not apply to:
- a. Income earned on state moneys that are deposited or invested to the credit of the industrial commission or any agency, utility, industry, enterprise, or business project operated, managed, controlled, or governed by the industrial commission.
  - b. Income earned by the Bank of North Dakota for its own account on state moneys that are deposited in or invested with the Bank.
  - c. Income earned on college and university funds not deposited in the state treasury.
- ~~46-17.~~ Shall perform all other duties as are prescribed by law.
- ~~47-18.~~ Shall correct any underpayment, overpayment, or erroneous payment of tax distribution funds made by the state treasurer in a timely manner. Unless otherwise provided by law, adjustments may be made from the general fund. This authority is limited to one hundred dollars per biennium, unless approved by the emergency commission. An adjustment of an insignificant amount need not be made at the discretion of the state treasurer. The state treasurer shall adopt a written policy identifying what is considered insignificant.

~~48-19.~~ May work to promote access to financial education tools that can help all North Dakotans make wiser choices in all areas of personal financial management.

Approved March 28, 2011  
Filed March 28, 2011

## CHAPTER 396

### SENATE BILL NO. 2070

(Government and Veterans Affairs Committee)  
(At the request of the Attorney General)

AN ACT to amend and reenact sections 4 and 5 of chapter 3 of the 2009 Session Laws, relating to the fire and tornado fund and the petroleum release compensation fund; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 4 of chapter 3 of the 2009 Session Laws is amended and reenacted as follows:

**SECTION 4. FIRE AND TORNADO FUND - FEES.** The attorney general shall charge and collect fees for services provided by the state fire marshal program to entities covered by the fire and tornado fund under chapter 26.1-22. Fees under this section may be collected in amounts of up to a total of ~~\$310,000~~\$450,000 for the biennium beginning July 1, 2009, and ending June 30, 2011. All fees collected under this section must be deposited in the attorney general's operating fund.

**SECTION 2. AMENDMENT.** Section 5 of chapter 3 of the 2009 Session Laws is amended and reenacted as follows:

**SECTION 5. PETROLEUM RELEASE COMPENSATION FUND - FEES.** The attorney general shall charge and collect fees for services provided by the state fire marshal program to entities covered by the petroleum release compensation fund under chapter 23-37. Fees under this section may be collected in amounts of up to a total of ~~\$35,000~~\$95,000 for the biennium beginning July 1, 2009, and ending June 30, 2011. All fees collected under this section must be deposited in the attorney general's operating fund.

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

Approved April 25, 2011

Filed April 25, 2011

## **CHAPTER 397**

### **HOUSE BILL NO. 1117**

(Judiciary Committee)  
(At the request of the Attorney General)

AN ACT to repeal section 54-12-01.2 of the North Dakota Century Code, relating to the authority to regulate gaming schools.

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

**SECTION 1. REPEAL.** Section 54-12-01.2 of the North Dakota Century Code is repealed.

Approved April 4, 2011  
Filed April 4, 2011

## CHAPTER 398

### SENATE BILL NO. 2210

(Senators Wardner, Lyson, Krebsbach)  
(Representatives Hawken, Keiser, Winrich)

AN ACT to create and enact two new sections to chapter 54-17, a new subdivision to subsection 2 of section 54-60.1-01, a new subsection to section 57-35.3-05, 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 a housing incentive fund and tax credits for contributions to the fund; to amend and reenact subsection 2 of section 54-17-07.2 and section 57-35.3-07 of the North Dakota Century Code, relating to the definition of multifamily housing facility and payment of the financial institutions tax; to provide a continuing appropriation; to provide an effective date; and to provide an expiration date.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 54-17-07.2 of the North Dakota Century Code is amended and reenacted as follows:

2. "Multifamily housing facility" means any facility containing ~~five~~four or more residential dwelling units; provided, that at least twenty percent of the units in each facility must be held for occupancy by persons or families of low and moderate income for ~~such~~the period of time as the industrial commission may determine and may include ~~such~~the related public or private facilities intended for commercial, cultural, recreational, community, or other civic purpose as the commission may approve.

**SECTION 2.** Two new sections to chapter 54-17 of the North Dakota Century Code are created and enacted as follows:

#### **Housing incentive fund - Continuing appropriation.**

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. After a public hearing, the housing finance agency shall create an annual allocation plan for the distribution of the fund. At least twenty-five percent of the fund must be used to assist developing communities with a population of not more than ten thousand individuals to address an unmet housing need or alleviate a housing shortage. At least fifty percent of the fund must be used to benefit households with incomes at not more than fifty percent of the area median income. The agency may collect a reasonable administrative fee from the fund.
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.

### **Report.**

Upon request, the housing finance agency shall report to the industrial commission on the activities of the housing incentive fund.

**SECTION 3.** A new subdivision to subsection 2 of section 54-60.1-01 of the North Dakota Century Code is created and enacted as follows:

Assistance from the housing finance agency through housing incentive funds.

**131 SECTION 4.** A new subsection to section 57-35.3-05 of the North Dakota Century Code is created and enacted as follows:

There is allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12 in an amount equal to the contribution to the housing incentive fund under section 2 of this Act. The taxpayer may not claim more than twenty percent of the credit for each separate contribution made in any taxable year. For the purposes of the credit allowed in this subsection, subsections 2 through 8 of section 6 of this Act apply.

**132 SECTION 5. AMENDMENT.** Section 57-35.3-07 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>131</sup> Section 57-35.3-05 was also amended by section 1 of Senate Bill No. 2160, chapter 458, section 3 of House Bill No. 1047, chapter 457, and section 1 of House Bill No. 1124, chapter 459.

<sup>132</sup> Section 57-35.3-07 was also amended by section 4 of House Bill No. 1047, chapter 457, section 2 of House Bill No. 1124, chapter 459, and section 2 of Senate Bill No. 2160, chapter 458.

### **57-35.3-07. Payment of tax.**

Two-sevenths of the tax before credits allowed under section 57-35.3-05, less the ~~credit~~ credits allowed under subsection 1 of section 57-35.3-05 and section 4 of this Act, must be paid to the commissioner on or before April fifteenth of the year in which the return is due, regardless of any extension of the time for filing the return granted under section 57-35.3-06. Five-sevenths of the tax before credits allowed under section 57-35.3-05, less the credit allowed under subsection 2 of section 57-35.3-05, must be paid to the commissioner on or before January fifteenth of the year after the return is due. Payment must be made by check, draft, or money order, payable to the commissioner, or as prescribed by the commissioner under subsection 15 of section 57-01-02.

**SECTION 6.** A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

#### **Housing incentive fund tax credit.**

1. A taxpayer is entitled to a credit as determined under this section against state income tax liability under section 57-38-30 or 57-38-30.3 for contributing to the housing incentive fund under section 2 of this Act. The amount of the credit is equal to the amount contributed to the fund during the taxable year. The taxpayer may not claim more than twenty percent of the credit for each separate contribution made in any taxable year.
2. North Dakota taxable income must be increased by the amount of the contribution upon which the credit under this section is computed but only to the extent the contribution reduced federal taxable income.
3. The contribution amount used to calculate the credit under this section may not be used to calculate any other state income tax deduction or credit allowed by law.
4. If the amount of the credit exceeds the taxpayer's tax liability for the taxable year, the excess may be carried forward to each of the ten succeeding taxable years.
5. The aggregate amount of tax credits allowed to all eligible contributors is limited to four million dollars per biennium. This limitation applies to all contributions for which tax credits are claimed under section 57-35.3-05 and this section.
6. Within thirty days after the date on which a taxpayer makes a contribution to the housing incentive fund, the housing finance agency shall file with each contributing taxpayer, and a copy with the tax commissioner, completed forms that show as to each contribution to the fund by that taxpayer the following:
  - a. The name, address, and social security number or federal employer identification number of the taxpayer that made the contribution.
  - b. The dollar amount paid for the contribution by the taxpayer.
  - c. The date the payment was received by the fund.
7. To receive the tax credit provided under this section, a taxpayer shall claim the credit on the taxpayer's state income or financial institutions tax return in the



manner prescribed by the tax commissioner and file with the return a copy of the form issued by the housing finance agency under subsection 6.

8. 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.
9. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity making a contribution to the housing incentive fund under this section is 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.

<sup>133</sup> **SECTION 7.** A new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

Housing incentive fund tax credit under section 6 of this Act.

**SECTION 8. EFFECTIVE DATE - EXPIRATION DATE.** Sections 1, 2, and 3 of this Act are effective through June 30, 2013, and are thereafter ineffective. Sections 4, 5, 6, and 7 of this Act are effective for the first two taxable years beginning after December 31, 2010, and are thereafter ineffective.

Approved April 26, 2011  
Filed April 26, 2011

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<sup>133</sup> Section 57-38-30.3 was also amended by section 1 of House Bill No. 1072, chapter 462, section 13 of Senate Bill No. 2057, chapter 50, section 7 of House Bill No. 1047, chapter 457, section 8 of House Bill No. 1124, chapter 459, section 10 of Senate Bill No. 2034, chapter 460, and section 1 of Senate Bill No. 2208, chapter 463.

## CHAPTER 399

### SENATE BILL NO. 2032

(Legislative Management)  
(Energy Development and Transmission Committee)

AN ACT to amend and reenact sections 54-17.6-02 and 54-17.6-04 of the North Dakota Century Code, relating to the purposes of the oil and gas research council and powers of the industrial commission.

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

**SECTION 1. AMENDMENT.** Section 54-17.6-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **54-17.6-02. Oil and gas research council purposes.**

There is created the oil and gas research council. The purpose of the council is to coordinate a program designed to demonstrate to the general public the importance of the state oil and gas exploration and production industry, to encourage and promote the wise and efficient use of energy, to promote environmentally sound exploration and production methods and technologies, to develop the state's oil and gas resources, ~~and~~ to support research and educational activities concerning the oil and natural gas exploration and production industry, and to promote innovation in safety, enhancement of environment, and increase in education concerning the distribution of petroleum products.

**SECTION 2. AMENDMENT.** Section 54-17.6-04 of the North Dakota Century Code is amended and reenacted as follows:

##### **54-17.6-04. Powers and duties of commission in managing and operating council.**

The commission is granted all the powers necessary or appropriate to carry out and effectuate the purposes of this chapter, including the power to:

1. Make grants or loans, and to provide other forms of financial assistance as necessary or appropriate, to qualified persons for research, development, marketing, and educational projects, and processes or activities directly related to the oil and gas exploration and production, or refining industry, or the petroleum marketing industry;
2. Enter into contracts or agreements to carry out the purposes of this chapter, including authority to contract for the administration of the oil and gas research, development, marketing, and educational program;
3. Keep accurate records of all financial transactions performed under this chapter;
4. Cooperate with any private, local, state, or national commission, organization, or agent, or group and to make contracts and agreements for programs benefiting the oil and gas industry;

5. Accept donations, grants, contributions, and gifts from any public or private source and deposit such in the oil and gas research fund; and
6. Make and explore orders, rules, and regulations necessary to effectuate the purposes of this chapter.

Approved April 25, 2011

Filed April 25, 2011

## CHAPTER 400

### SENATE BILL NO. 2198

(Senators Grindberg, Laffen, Robinson)  
(Representatives Beadle, Keiser, Metcalf)

AN ACT to create and enact a new section to chapter 54-21.2 of the North Dakota Century Code, relating to heating, ventilation, and air-conditioning interoperability standards; and to provide an effective date.

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

**SECTION 1.** A new section to chapter 54-21.2 of the North Dakota Century Code is created and enacted as follows:

**Heating, ventilation, and air-conditioning interoperability standards for public buildings.**

Except as provided in subsection 2 of section 54-21.2-02, any new construction or any remodeling of a public building which affects the heating, ventilation, or air-conditioning systems in the building and which is paid for using any state funds must be constructed to include open protocol heating, ventilation, and air-conditioning systems that provide for interoperability of the systems.

**SECTION 2. EFFECTIVE DATE.** This Act becomes effective on January 1, 2012.

Approved April 20, 2011  
Filed April 20, 2011

## CHAPTER 401

### SENATE BILL NO. 2361

(Senators Lyson, Hogue)  
(Representatives Hatlestad, Sukut)

AN ACT to create and enact two new subsections to section 54-21.3-02 and a new section to chapter 54-21.3 of the North Dakota Century Code, relating to definitions under the State Building Code and used temporary work camp housing exemptions; to amend and reenact section 54-21.3-04 of the North Dakota Century Code, relating to applicability of the State Building Code to other state or local government codes; and to declare an emergency.

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

**SECTION 1.** Two new subsections to section 54-21.3-02 of the North Dakota Century Code are created and enacted as follows:

"Temporary work camp housing" includes a modular residential structure used to house workers on a temporary basis for a maximum period of five years.

"Code enforcement agency" means an agency of the state or local government with authority to inspect buildings and enforce the law, ordinances, and regulations which establish standards and requirements applicable to the construction, installation, alteration, repair, or relocation of buildings.

**SECTION 2. AMENDMENT.** Section 54-21.3-04 of the North Dakota Century Code is amended and reenacted as follows:

#### **54-21.3-04. Exemptions.**

1. ~~The~~Except as specifically provided in this chapter, the following statewide codes are exempt from this chapter:
  - a. The Standards for Electrical Wiring and Equipment, as contained in North Dakota Administrative Code article 24-02.
  - b. The State Plumbing Code, as contained in North Dakota Administrative Code article 62-03.
  - c. The State Fire Code, as contained in the rules of the state fire marshal as provided in section 18-01-04.
2. The following buildings are exempt from this chapter:
  - a. Buildings which are neither heated nor cooled.
  - b. Buildings used whose peak design rate of energy usage is less than one watt per square foot [929.0304 square centimeters] or three and four-tenths British thermal units an hour per square foot [929.0304 square centimeters] of floor area.
  - c. Restored or reconstructed buildings deliberately preserved beyond their normal term of use because of historical associations, architectural

interests, or public policy, or buildings otherwise qualified as a pioneer building, historical site, state monument, or other similar designation pursuant to state or local law.

3. Any building used for agricultural purposes, unless a place of human habitation or for use by the public, is exempt from this chapter.

**SECTION 3.** A new section to chapter 54-21.3 of the North Dakota Century Code is created and enacted as follows:

**Used temporary work camp housing - Exemption.**

State or local government code enforcement agencies may allow exemptions or accept alternate methods for construction and placement of temporary work camp housing that has been previously used as housing or temporary work camp housing in a different location, provided that the waiver does not substantially compromise the health or safety of workers. This authority is granted to code enforcement agencies enforcing the State Building Code, the State Electrical Code, and the State Plumbing Code when acting within their existing jurisdiction. This section does not apply to newly constructed temporary work camp housing.

1. State or local government code enforcement agencies, acting within their existing jurisdiction, may conduct a nondestructive walkthrough inspection of previously used temporary work camp housing to ensure compliance with applicable codes, including the State Building Code, State Electrical Code, and State Plumbing Code. If the housing is found to be compliant with these codes, or to not substantially compromise the health or safety of workers pursuant to a waiver under this section, the code enforcement agency may issue a limited certificate of inspection, which is effective for a period of five years. Residents may not be permitted to move into or live in temporary work camp housing unless the housing has a current limited certificate of inspection or has been found to meet all applicable codes and requirements by any code enforcement agency having jurisdiction.
2. The applicable codes, including the State Building Code, the State Electrical Code, and the State Plumbing Code, are applicable as a standard for liability in legal actions against owners or operators of temporary work camp housing if exemptions are granted.
3. An owner of temporary work camp housing has the duty to remove that housing and all related above-grade and below-grade infrastructure within one hundred twenty days after the temporary work camp housing is vacated. Any city or county may abate any public nuisance caused by vacated temporary work camp housing within its jurisdiction. An owner of temporary work camp housing shall provide the city or county where the temporary work camp housing is installed with a surety bond, letter of credit, or other security instrument in the form and in an amount specified by the city or county. These funds must be used to cover actual expenses that may be incurred by the city or county in removal of the temporary work camp housing, including any above-grade or below-grade infrastructure. The owner is liable for any expenses that are reasonably incurred by the city or county which exceed the amount of the security.

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

Approved April 26, 2011  
Filed April 26, 2011

## CHAPTER 402

### HOUSE BILL NO. 1425

(Representatives Wieland, Brabandt, Koppelman, Sukut)  
(Senators Burckhard, J. Lee)

AN ACT to amend and reenact subsection 4 of section 54-21.3-03 of the North Dakota Century Code, relating to the state building code.

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

**SECTION 1. AMENDMENT.** Subsection 4 of section 54-21.3-03 of the North Dakota Century Code is amended and reenacted as follows:

4. ~~Neither the~~The state building code ~~nor~~ a building code adopted by a city, township, or county may not include a requirement that fire sprinklers be installed in a single family dwelling or a residential building that contains no more than two dwelling units. The state building code, plumbing code, electrical code, or an equivalent code adopted by a political subdivision must provide that a building designed for and used as a school portable classroom may be constructed and inspected as a temporary structure as defined by the state building code or may be permitted as a permanent school portable classroom. The foundation system of such a structure must comply with the recommendations of the manufacturer's engineering report for a preengineered unit or a structural engineer's report. Frost-free footings may not be required for a temporary structure that meets the requirements of the state building code unless required by an engineering report. Temporary electrical and plumbing installations may be allowed for any structure by the governmental entities governing those areas of construction or the applicable codes.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 403

### SENATE BILL NO. 2366

(Senators Dotzenrod, Freborg)  
(Representatives Froseth, Mueller)

AN ACT to amend and reenact section 54-21.3-07 of the North Dakota Century Code, relating to inspections of modular structures.

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

**SECTION 1. AMENDMENT.** Section 54-21.3-07 of the North Dakota Century Code is amended and reenacted as follows:

#### **54-21.3-07. Modular residential and commercial structures - Third-party inspections - Rules.**

The manufacturer of a modular residential or commercial structure that is built in a factory shall contract with a third party for the inspection of the structure for compliance with all applicable building, electrical, fire, and plumbing codes and standards during the manufacturing process in the factory. A third party that conducts inspections and certifies compliance with all applicable codes and standards must be approved as a certified third-party inspector by the division of community services. The department of commerce shall adopt rules for the certification of inspectors and for the procedures to be followed in conducting inspections of modular residential and commercial structures. When a manufacturer of modular residential or commercial structures contracts with a certified third-party inspector to monitor compliance with all applicable building, electrical, fire, and plumbing codes and standards for a modular residential or commercial structure, no further inspection by state or local building, electrical, fire, or plumbing inspectors may be required for that structure during the manufacturing process in the factory. This section does not apply to a factory manufacturing fewer than ~~six~~two residential or commercial structures per year.

Approved April 19, 2011  
Filed April 20, 2011



## CHAPTER 404

### SENATE BILL NO. 2284

(Senators Lyson, Wardner)  
(Representatives Rust, Steiner)

AN ACT to provide for an interstate compact on industrialized or modular buildings.

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

#### **SECTION 1.**

##### **Compact on industrialized or modular buildings.**

The interstate compact on industrialized or modular buildings is entered with all jurisdictions legally joining the compact in the form substantially as follows:

#### **ARTICLE I - FINDINGS AND DECLARATIONS OF POLICY**

1. The compacting states find that:
  - a. Industrialized or modular buildings are constructed in factories in the various states and are a growing segment of the nation's affordable housing and commercial building stock.
  - b. The regulation of industrialized or modular buildings varies from state to state and locality to locality, which creates confusion and burdens state and local building officials and the industrialized or modular building industry.
  - c. Regulation by multiple jurisdictions imposes additional costs, which are ultimately borne by the owners and users of industrialized or modular buildings, restricts market access, and discourages the development and incorporation of new technologies.
2. It is the policy of each of the compacting states to:
  - a. Provide the states which regulate the design and construction of industrialized or modular buildings with a program to coordinate and uniformly adopt and administer the states' rules and regulations for such buildings, all in a manner to assure interstate reciprocity.
  - b. Provide to the United States Congress assurances that would preclude the need for a voluntary preemptive federal regulatory system for modular housing, as outlined in section 572 of the Housing and Community Development Act of 1987, including development of model standards for modular housing construction, such that design and performance will ensure quality, durability, and safety; will be in accordance with lifecycle cost-effective energy conservation standards; all to promote the lowest total construction and operating costs over the life of such housing.

## **ARTICLE II - DEFINITIONS**

As used in this compact, unless the context clearly requires otherwise:

1. "Commission" means the interstate industrialized or modular buildings commission.
2. "Industrialized or modular building" means any building which is of closed construction, i.e., constructed in such a manner that concealed parts or processes of manufacture cannot be inspected at the site, without disassembly, damage or destruction, and which is made or assembled in manufacturing facilities, off the building site, for installation, or assembly and installation, on the building site. "Industrialized or modular building" includes modular housing which is factory-built single-family and multifamily housing, including closed wall panelized housing, and other modular, nonresidential buildings. "Industrialized or modular building" does not include any structure subject to the requirements of the National Manufactured Home Construction and Safety Standards Act of 1974.
3. "Interim reciprocal agreement" means a formal reciprocity agreement between a noncompacting state wherein the noncompacting state agrees that labels evidencing compliance with the model rules and regulations for industrialized or modular buildings, as authorized in article VIII, section 9, shall be accepted by the state and its subdivisions to permit installation and use of industrialized or modular buildings. Further, the noncompacting state agrees that by legislation or regulation, and appropriate enforcement by uniform administrative procedures, the noncompacting state requires all industrialized or modular building manufacturers within that state to comply with the model rules and regulations for industrialized or modular buildings.
4. "State" means a state of the United States, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.
5. "Uniform administrative procedures" means the procedures adopted by the commission, after consideration of any recommendations from the rules development committee, which state and local officials, and other parties, in one state, will utilize to assure state and local officials, and other parties in other states, of the substantial compliance of industrialized or modular building construction with the construction standard of requirements of such other states; to assess the adequacy of building systems; and to verify and assure the competency and performance of evaluation and inspection agencies.
6. "Model rules and regulations for industrialized or modular buildings" means the construction standards adopted by the commission, after consideration of any recommendations from the rules development committee, which govern the design, manufacture, handling, storage, delivery, and installation of industrialized or modular buildings and building components. The construction standards and any amendments thereof shall conform insofar as practicable to model building codes and referenced standards generally accepted and in use throughout the United States.

## **ARTICLE III - CREATION OF COMMISSION**

The compacting states hereby create the interstate industrialized or modular buildings commission, hereinafter called commission. Said commission shall be a body corporate of each compacting state and an agency thereof. The commission

shall have all the powers and duties set forth herein and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states.

#### **ARTICLE IV - SELECTION OF COMMISSIONERS**

The commission shall be selected as follows. As each state becomes a compacting state, one resident shall be appointed as commissioner. The commissioner shall be selected by the governor of the compacting state, being designated from the state agency charged with regulating industrialized or modular buildings or, if such state agency does not exist, being designated from among those building officials with the most appropriate responsibilities in the state. The commissioner may designate another official as an alternate to act on behalf of the commissioner at commission meetings which the commissioner is unable to attend.

Each state commissioner shall be appointed, suspended, or removed and shall serve subject to and in accordance with the laws of the state which said commissioner represents; and each vacancy occurring shall be filled in accordance with the laws of the state wherein the vacancy exists.

When three state commissioners have been appointed in the manner described, those state commissioners shall select one additional commissioner who shall be a representative of manufacturers of industrial- or commercial-use industrialized or modular buildings. When six state commissioners have been appointed in the manner described, the state commissioners shall select a second additional commissioner who shall be a representative of consumers of industrialized or modular buildings. With each addition of three state commissioners, the state commissioners shall appoint one additional representative commissioner, alternating between a representative of manufacturers of industrialized or modular buildings and consumers of industrialized or modular buildings. The ratio between state commissioners and representative commissioners shall be three to one. In the event states withdraw from the compact or, for any other reason, the number of state commissioners is reduced, the state commissioners shall remove the last added representative commissioner as necessary to maintain a ratio of state commissioners to representative commissioners of three to one.

Upon a majority vote of the state commissioners, the state commissioners may remove, fill a vacancy created by, or replace any representative commissioner, provided that any replacement is made from the same representative group and a three-to-one ratio is maintained. Unless provided otherwise, the representative commissioners have the same authority and responsibility as the state commissioners.

In addition, the commission may have as a member one commissioner representing the United States government if federal law authorizes such representation. Such commissioner shall not vote on matters before the commission. Such commission shall be appointed by the President of the United States, or in such other manner as may be provided by Congress.

#### **ARTICLE V - VOTING**

Each commissioner, except the commissioner representing the United States government, shall be entitled to one vote on the commission. A majority of the commissioners shall constitute a quorum for the transaction of business. Any business transacted at any meeting of the commission must be by affirmative vote of a majority of the quorum present and voting.

## **ARTICLE VI - ORGANIZATION AND MANAGEMENT**

The commission shall elect annually, from among its members, a chairman, a vice chairman, and a treasurer. The commission shall also select a secretariat, which shall provide an individual who shall serve as secretary of the commission. The commission shall fix and determine the duties and compensation of the secretariat.

The commissioners shall serve without compensation, but shall be reimbursed for their actual and necessary expenses from the funds of the commission.

The commission shall adopt a seal.

The commission shall adopt bylaws, rules, and regulations for the conduct of its business, and shall have the power to amend and rescind these bylaws, rules, and regulations.

The commission shall establish and maintain an office at the same location as the office maintained by the secretariat for the transaction of its business and may meet at any time, but in any event must meet at least once a year. The chairman may call additional meetings and upon the request of a majority of the commissioners of three or more of the compacting states shall call an additional meeting.

The commission annually shall make the governor and legislature of each compacting state a report covering its activities for the preceding year. Any donation or grant accepted by the commission or services borrowed shall be reported in the annual report of the commission and shall include the nature, amount, and conditions, if any, of the donation, gift, grant, or services borrowed and the identity of the donor or lender. The commission may make additional reports as it may deem desirable.

## **ARTICLE VII - COMMITTEES**

The commission will establish such committees as it deems necessary, including the following:

1. An executive committee which functions when the full commission is not meeting, as provided in the bylaws of the commission. The executive committee will ensure that proper procedures are followed in implementing the commission's programs and in carrying out the activities of the compact. The executive committee shall be elected by vote of the commission. It shall be comprised of at least three and no more than nine commissioners, selected from those commissioners who are representatives of the governor of their respective state.
2. A rules development committee appointed by the commission. The committee shall be consensus-based and consist of not less than seven nor more than twenty-one members. Committee members will include state building regulatory officials; manufacturers of industrialized or modular buildings; private, third-party inspection agencies; and consumers. This committee may recommend procedures which state and local officials, and other parties in one state may utilize to assure state and local officials, and other parties in other states of the substantial compliance of industrialized or modular building construction with the construction standard requirements of such other states; to assess the adequacy of building systems; and to verify and assure the competency and performance of evaluation and inspection agencies. This committee may also recommend construction standards for the design, manufacture, handling, storage, delivery, and installation of industrialized or modular buildings and building components. The committee will submit its

recommendations to the commission, for the commission's consideration in adopting and amending the uniform administrative procedures and the model rules and regulations for industrialized or modular buildings. The committee may also review the regulatory programs of the compacting states to determine whether those programs are consistent with the uniform administrative procedures or the model rules and regulations for industrialized or modular buildings and may make recommendations concerning the states' programs to the commission. In carrying out its functions, the rules committee may conduct public hearings and otherwise solicit public input and comment.

3. Any other advisory, coordinating, or technical committees, membership on which may include private persons, public officials, associations, or organizations. Such committees may consider any matter of concern to the commission.
4. Such additional committees as the commission's bylaws may provide.

### **ARTICLE VIII - POWER AND AUTHORITY**

In addition to the powers conferred elsewhere in this compact, the commission shall have power to:

1. Collect, analyze, and disseminate information relating to industrialized or modular buildings.
2. Undertake studies of existing laws, codes, rules and regulations, and administrative practices of the states relating to industrialized or modular buildings.
3. Assist and support committees and organizations which promulgate, maintain, and update model codes or recommendations for uniform administrative procedures or model rules and regulations for industrialized or modular buildings.
4. Adopt and amend uniform administrative procedures and model rules and regulations for industrialized or modular buildings.
5. Make recommendations to compacting states for the purpose of bringing such states' laws, codes, rules and regulations, and administrative practices into conformance with the uniform administrative procedures or the model rules and regulations for industrialized or modular buildings, provided that such recommendations shall be made to the appropriate state agency with due consideration for the desirability of uniformity while also giving appropriate consideration to special circumstances which may justify variations necessary to meet unique local conditions.
6. Assist and support the compacting states with monitoring of plan review programs and inspection programs, which will assure that the compacting states have the benefit of uniform industrialized or modular building plan review and inspection programs.
7. Assist and support organizations which train state and local government and other program personnel in the use of uniform industrialized or modular building plan review and inspection programs.

8. Encourage and promote coordination of state regulatory action relating to manufacturers, public, or private inspection programs.
9. Create and sell labels to be affixed to industrialized or modular building units, constructed in or regulated by compacting states, where such labels will evidence compliance with the model rules and regulations for industrialized or modular buildings, enforced in accordance with the uniform administrative procedures. The commission may use receipts from the sale of labels to help defray the operating expenses of the commission.
10. Assist and support compacting states' investigations into and resolutions of consumer complaints which relate to industrialized or modular buildings constructed in one compacting state and sited in another compacting state.
11. Borrow, accept, or contract for the services of personnel from any state or the United States or any subdivision or agency thereof, from any interstate agency, or from any institution, association, person, firm, or corporation.
12. Accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state or the United States or any subdivision or agency thereof, from any interstate agency, or from any institution, person, firm, or corporation, and may receive, utilize, and dispose of the same.
13. Establish and maintain such facilities as may be necessary for the transacting of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.
14. Enter into contracts and agreements, including interim reciprocal agreements with noncompacting states.

### **ARTICLE IX - FINANCE**

The commission shall submit to the governor or designated officer or officers of each compacting state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.

Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the compacting states. The total amount of appropriations requested under any such budget shall be apportioned among the compacting states as follows: one-half in equal shares; one-fourth among the compacting states in accordance with the ratio of their populations to the total population of the compacting states, based on the last decennial federal census; and one-fourth among the compacting states in accordance with the ratio of industrialized or modular building units manufactured in each state to the total of all units manufactured in all of the compacting states.

The commission shall not pledge the credit of any compacting state. The commission may meet any of its obligations in whole or in part with funds available to it by donations, grants, or sale of labels: provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except if the commission makes use of funds available to it by donations, grants, or sale of labels, the commission shall not incur any obligation prior to the allotment of funds by the compacting states adequate to meet the same.

The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the commission.

The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the compacting states and any person authorized by the commission.

Nothing contained in this article shall be construed to prevent commission compliance relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

#### **ARTICLE X - ENTRY INTO FORCE AND WITHDRAWAL**

This compact shall enter into force when enacted into law by any three states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof. The commission shall arrange for notification of all compacting states whenever there is a new enactment of the compact.

Any compacting state may withdraw from this compact by enacting a statute repealing the same. No withdrawal shall affect any liability already incurred by or chargeable to a compacting state prior to the time of such withdrawal.

#### **ARTICLE XI - RECIPROCITY**

If the commission determines that the standards for industrialized or modular buildings prescribed by statute, rule, or regulation of compacting state are at least equal to the commission's model rules and regulations for industrialized or modular buildings, and that such state standards are enforced by the compacting state in accordance with the uniform administrative procedures, industrialized or modular buildings approved by such a compacting state shall be deemed to have been approved by all the compacting states for placement in those states in accordance with procedures prescribed by the commission.

#### **ARTICLE XII - EFFECT ON OTHER LAWS AND JURISDICTION**

Nothing in this compact shall be construed to:

1. Withdraw or limit the jurisdiction of any state or local court or administrative officer or body with respect to any person, corporation, or other entity or subject matter, except to the extent that such jurisdiction pursuant to this compact, is expressly conferred upon another agency or body.
2. Supersede or limit the jurisdiction of any court of the United States.

#### **ARTICLE XIII - CONSTRUCTION AND SEVERABILITY**

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person, or circumstances is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to

the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

Approved April 19, 2011  
Filed April 19, 2011



## CHAPTER 405

### SENATE BILL NO. 2190

(Senators Nething, Lyson)  
(Representatives DeKrey, Kretschmar)

AN ACT to create a new subsection to section 54-23.3-04 of the North Dakota Century Code, relating to the powers and duties of the director of the department of corrections and rehabilitation; to amend and reenact section 12-59-20 of the North Dakota Century Code, relating to probation and parole officers; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 12-59-20 of the North Dakota Century Code is amended and reenacted as follows:

##### **12-59-20. Probation and parole officers as peace officers.**

Probation and parole officers have the power of a peace officer for the purpose of enforcing probation and parole laws, and shall provide assistance to and receive assistance from other law enforcement officers in securing and jailing probation and parole violators and other offenders and in preventing and controlling of criminal activity. Probation and parole officers may supervise sexually dangerous individuals released to community placement on an outpatient basis in accordance with section 25-03.3-24.

**SECTION 2.** A new subsection to section 54-23.3-04 of the North Dakota Century Code is created and enacted as follows:

To employ personnel and to establish policies and procedures to supervise sexually dangerous individuals released to community placement on an outpatient basis in accordance with section 25-03.3-24.

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

Approved April 19, 2011

Filed April 19, 2011

## CHAPTER 406

### SENATE BILL NO. 2099

(Education Committee)  
(At the request of the State Library)

AN ACT to amend and reenact subsection 7 of section 54-24-03 of the North Dakota Century Code, relating to the state library biennial report to the superintendent of public instruction and the governor.

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

**SECTION 1. AMENDMENT.** Subsection 7 of section 54-24-03 of the North Dakota Century Code is amended and reenacted as follows:

7. Compile statistics on all North Dakota public libraries and their services and their larger counterparts of county and multicounty libraries, regional library cooperatives ~~including, and~~ multitype library authorities, ~~and of the work done at the state library, and make.~~ Make a full biennial report to the superintendent of public instruction and the governor ~~of the work done at the state library.~~ The state librarian may not require a private sector library to submit information relating to the provisions of this subsection.

Approved April 19, 2011  
Filed April 20, 2011

## CHAPTER 407

### HOUSE BILL NO. 1089

(Transportation Committee)  
(At the request of the State Treasurer)

AN ACT to create and enact a new section to chapter 54-27 of the North Dakota Century Code, relating to effective dates of federal census data for use in tax distributions made by the state treasurer; to amend and reenact section 54-27-19 of the North Dakota Century Code, relating to the highway tax distribution fund; to provide for retroactive application; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 54-27-19 of the North Dakota Century Code is amended and reenacted as follows:

#### **54-27-19. Highway tax distribution fund - State treasurer to make allocation to state, counties, and cities.**

A highway tax distribution fund is created as a special fund in the state treasury into which must be deposited the moneys available by law from collections of motor vehicle registration and related fees, fuels taxes, special fuels taxes, use taxes, and special fuels excise taxes. The state treasurer shall transfer the first five million five hundred thousand dollars per biennium from the highway tax distribution fund to the state highway fund for the purpose of providing administrative assistance to other transferees. After the transfer of the first five million five hundred thousand dollars, any moneys in the highway tax distribution fund must be allocated and transferred monthly by the state treasurer, as follows:

1. Sixty-one and three-tenths percent must be transferred monthly to the state department of transportation and placed in a state highway fund.
2. Two and seven-tenths percent must be transferred monthly to the township highway fund.
3. One and five-tenths percent must be transferred monthly to the public transportation fund.
4. Thirty-four and five-tenths percent must be allocated to the counties of this state in proportion to the number of vehicle registrations credited to each county. Each county must be credited with the certificates of title of vehicles registered by residents of the county. The state treasurer shall compute and distribute the counties' share monthly after deducting the incorporated cities' share. All the moneys received by the counties from the highway tax distribution fund must be set aside in a separate fund called the "highway tax distribution fund" and must be appropriated and applied solely for highway purposes in accordance with section 11 of article X of the Constitution of North Dakota. The state treasurer shall compute and distribute monthly the sums allocated to the incorporated cities within each county according to the formula in this subsection on the basis of the per capita population of all of the incorporated cities situated within each county as determined by the last

official regular or special federal census or the census taken in accordance with the provisions of chapter 40-02 in case of a city incorporated subsequent to the census. ~~However, in~~

- a. For counties having no cities with a population of ten thousand or more, a statewide per capita average must be used, as determined by calculating twenty-seven percent of the amount allocated to all of the counties under this subsection divided by the total population of all of the incorporated cities in the state. Each city must be paid an amount equal to the product of the statewide per capita and that city's population.
- b. For each county having a city with a population of ten thousand or more, the amount transferred each month into the county highway tax distribution fund must be the difference between the amount allocated to that county pursuant to this subsection and the total amount allocated and distributed to the incorporated cities in that county as computed according to the following formula:
  - a. (1) A statewide per capita average as determined by calculating twenty-seven percent of the amount allocated to all of the counties under this subsection divided by the total population of all of the incorporated cities in the state.
  - b. (2) The share distributed to each city in the county having a population of less than one thousand must be determined by multiplying the population of that city by the product of 1.50 times the statewide per capita average computed under subdivision a.
  - c. (3) The share distributed to each city in the county having a population of one thousand to four thousand nine hundred ninety-nine, inclusive, must be determined by multiplying the population of that city by the product of 1.25 times the statewide per capita average computed under subdivision a.
  - d. (4) The share distributed to each city in the county having a population of five thousand or more must be determined by multiplying the population of that city by the statewide per capita average for all such cities, which per capita average must be computed as follows: the total of the shares computed under subdivisions b and c for all cities in the state having a population of less than five thousand must be subtracted from the total incorporated cities' share in the state as computed under subdivision a and the balance remaining must then be divided by the total population of all cities of five thousand or more in the state.
5. The moneys allocated to the incorporated cities must be distributed to them monthly by the state treasurer and must be deposited by the cities in a separate fund and may only be used in accordance with section 11 of article X of the Constitution of North Dakota and an incorporated city may use the fund for the construction, reconstruction, repair, and maintenance of public highways within or outside the city pursuant to an agreement entered into between the city and any other political subdivision as authorized by section 54-40-08.

**SECTION 2.** A new section to chapter 54-27 of the North Dakota Century Code is created and enacted as follows:

**Effective date of census data - Tax distributions.**

Unless otherwise provided by this code, the effective date for federal decennial census data on any population-based tax distributions made by the state treasurer is July first following the release of the federal decennial census data.

**SECTION 3. RETROACTIVE APPLICATION.** Section 2 of this Act is retroactive in application to March 1, 2011.

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

Approved April 8, 2011

Filed April 11, 2011

## CHAPTER 408

### SENATE BILL NO. 2203

(Senators Uglem, J. Lee, Nodland)  
(Representatives Kaldor, Paur, Vigesaa)

AN ACT to amend and reenact section 54-27-26 of the North Dakota Century Code, relating to annual reports for transportation funding; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 54-27-26 of the North Dakota Century Code is amended and reenacted as follows:

#### **54-27-26. Report on transportation funding and expenditures.**

Each county, city, and township shall provide to the tax commissioner an annual report on funding and expenditures relating to transportation projects and programs. The report must be provided within ninety days after the close of a calendar year. The report must contain by fund the beginning balance, revenues by major source, expenditures by major category, the ending balance, and any other information requested by the tax commissioner. A township may provide a copy of the appropriate annual township financial report that was provided to the county as the annual report.

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

Approved April 27, 2011  
Filed April 27, 2011

## CHAPTER 409

### SENATE BILL NO. 2103

(Industry, Business and Labor Committee)  
(At the request of the State Treasurer)

AN ACT to create and enact a new section to chapter 54-27 of the North Dakota Century Code, relating to disposition of interest on closed state funds; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 54-27 of the North Dakota Century Code is created and enacted as follows:

Unless otherwise directed, interest earned on moneys remaining in a fund which has been closed must be credited to the general fund.

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

Approved April 25, 2011

Filed April 25, 2011

## CHAPTER 410

### HOUSE BILL NO. 1397

(Representative Schatz)

AN ACT to amend and reenact section 54-35-01 of the North Dakota Century Code, relating to the membership of the legislative management; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 54-35-01 of the North Dakota Century Code is amended and reenacted as follows:

#### **54-35-01. Legislative management - Created - Members - Vacancy - Terms.**

1. The North Dakota legislative management consists of the majority and minority leaders of the house and of the senate ~~plus, the speaker of the house, and~~ six senators and ~~sevensix~~ representatives chosen biennially before the close of each regular legislative session.
2. In the house of representatives the ~~speaker of the house~~majority leader shall appoint to the legislative management four members ~~recommended~~elect~~ed~~ by the majority leader and three members recommended by political party with the largest number of members in the house and the minority leader, ~~except that the speaker must by virtue of office be one of the four members appointed from the speaker's faction of the house shall appoint to the legislative management two members elected by the political party with the next largest number of members in the house.~~
3. In the senate the ~~lieutenant governor~~majority leader shall appoint to the legislative management four members ~~recommended~~elect~~ed~~ by the majority leader and two members recommended by political party with the largest number of members in the senate and the minority leader shall appoint to the legislative management two members elected by the political party with the next largest number of members in the senate.
4. Any vacancy occurring when the legislative assembly is not in session must be filled by the selection of another member of the legislative assembly belonging to the same ~~faction~~party as the member originally appointed, the selection to be made by the remaining senate or house members of the legislative management, depending upon which body has the vacancy. Each senator and each representative chosen to serve on the legislative management shall serve until a new legislative management has been selected at the next regular legislative session; provided, however, that no senator, not a holdover, who is not reelected to the senate, and no representative, who is not reelected to the house of representatives, may serve as a member of the legislative management beyond the closing day of the term to which elected. Any vacancy occurring because any member of the legislative management is not reelected must be filled for the period from the beginning of the session until a new legislative management is selected, in the same manner as the original legislative management is selected.



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

Approved April 18, 2011  
Filed April 18, 2011

## CHAPTER 411

### SENATE BILL NO. 2186

(Senators Wardner, Nodland, Andrist)  
(Representatives Brandenburg, Kaldor)

AN ACT to amend and reenact section 54-35-18 of the North Dakota Century Code, relating to the energy development and transmission committee.

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

**SECTION 1. AMENDMENT.** Section 54-35-18 of the North Dakota Century Code is amended and reenacted as follows:

**54-35-18. (~~Effective through August 1, 2011~~) Energy development and transmission committee.**

The legislative management, during each biennium, shall appoint an energy development and transmission committee in the same manner as the legislative management appoints other interim committees. The legislative management shall appoint six members of the house of representatives, four of whom must be from the majority political party and two of whom must be from the minority political party, and six members of the senate, four of whom must be from the majority political party and two of whom must be from the minority political party. The chairman of the legislative management shall designate the chairman of the committee. The committee shall operate according to the statutes and procedure governing the operation of other legislative management interim committees. The committee shall study the impact of a comprehensive energy policy for the state and the development of each facet of the energy industry, from the obtaining of the raw natural resource to the sale of the final product in this state, other states, and other countries. The study may include the review of and recommendations relating to policy affecting extraction, generation, processing, transmission, transportation, marketing, distribution, and use of energy; ~~and the taxation of shallow gas to reduce energy costs for all North Dakota residents.~~

Approved April 19, 2011  
Filed April 20, 2011

## CHAPTER 412

### SENATE BILL NO. 2053

(Legislative Management)  
(Tribal and State Relations Committee)

AN ACT to amend and reenact section 54-35-23 of the North Dakota Century Code, relating to extension and duties of the committee on tribal and state relations.

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

**SECTION 1. AMENDMENT.** Section 54-35-23 of the North Dakota Century Code is amended and reenacted as follows:

#### **54-35-23. (Effective through July 31, 2014~~2013~~) Committee on tribal and state relations - Membership - Duties.**

1. The committee on tribal and state relations is composed of seven members as follows:
  - a. ~~The~~ chairman designated by the chairman of the legislative management ~~or the chairman's designee~~;
  - b. Three members of the house of representatives, two of whom must be selected by the leader representing the majority faction of the house of representatives and one of whom must be selected by the leader representing the minority faction of the house of representatives; and
  - c. Three members of the senate, two of whom must be selected by the leader representing the majority faction of the senate and one of whom must be selected by the leader representing the minority faction of the senate.
2. ~~The chairman of the legislative management, or the chairman's designee, shall serve as chairman of the committee.~~
3. The committee shall meet at such times and places as determined by the chairman. The legislative council shall provide staffing for the committee.
- 4.3. The committee shall conduct joint meetings with the ~~native American~~ North Dakota tribal citizens' governments' task force to study tribal-state issues, including government-to-government relations, ~~the delivery of human~~ services, case management services, child support enforcement, education, corrections, and issues related to the promotion of economic development. During the 2011-12 interim, the committee also shall study whether the members of the North Dakota tribal governments' task force should be voting members of the committee. After the joint meetings have concluded, the committee shall meet to prepare a report on its findings and recommendations, together with any legislation required to implement those recommendations, to the legislative management.

- ~~5.4.~~ The members of the committee are entitled to compensation from the legislative council for attendance at committee meetings at the rate provided for members of the legislative assembly for attendance at interim committee meetings and are entitled to reimbursement for expenses incurred in attending the meetings in the amounts provided by law for other state officers.
- ~~6.a.5.~~ a. The ~~native American~~North Dakota tribal citizens' governments' task force is composed of six members as follows:
- (1) The executive director of the Indian affairs commission, or the executive director's designee;
  - (2) The chairman of the Standing Rock Sioux Tribe, or the chairman's designee;
  - (3) The chairman of the Spirit Lake Tribe, or the chairman's designee;
  - (4) The chairman of the Three Affiliated Tribes of the Fort Berthold Reservation, or the chairman's designee;
  - (5) The chairman of the Turtle Mountain Band of Chippewa Indians, or the chairman's designee; and
  - (6) The chairman of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, or the chairman's designee.
- b. If the executive director of the Indian affairs commission or any of the tribal chairmen appoint a designee to serve on the task force, only one individual may serve as that designee during the biennium. A substitute designee may be appointed by the executive director of the Indian affairs commission or a tribal chairman in the event of the death, incapacity, resignation, or refusal to serve of the initial designee.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 413

### HOUSE BILL NO. 1252

(Representative Carlson)

AN ACT to establish a legislative management health care reform review committee.

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

**SECTION 1. LEGISLATIVE MANAGEMENT HEALTH CARE REFORM REVIEW COMMITTEE.** During the 2011-12 interim, the chairman of the legislative management shall appoint a committee to monitor the impact of the federal Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010; rules adopted by federal agencies as a result of that legislation; and any amendments to that legislation. The membership of the committee must include the chairmen of the house human services committee and the house industry, business and labor committee and the chairmen of the senate human services committee and the senate industry, business and labor committee. If any of those individuals are unwilling or unable to serve, the chairman of the legislative management shall appoint a replacement who is a member of the same legislative chamber as the individual being replaced. If a special session of the legislative assembly is necessary to adopt legislation in response to the federal legislation, the committee shall report to the legislative management before any special session. The committee shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the legislative management, which shall report the findings and recommendations to the sixty-third legislative assembly.

Approved April 27, 2011

Filed April 27, 2011

## CHAPTER 414

### HOUSE BILL NO. 1267

(Representatives Carlson, Vigesaa)  
(Senators Christmann, Stenehjem)

AN ACT to establish a legislative management redistricting committee, to provide for the implementation of a legislative redistricting plan, to exempt drafts of redistricting plans from open records requirements, and to provide for a special legislative session; to provide an expiration date; and to declare an emergency.

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

##### **SECTION 1. LEGISLATIVE MANAGEMENT REDISTRICTING COMMITTEE - OPEN RECORDS EXEMPTION - SPECIAL LEGISLATIVE SESSION.**

1. The chairman of the legislative management shall appoint a committee to develop a legislative redistricting plan to be implemented in time for use in the 2012 primary election. The committee must consist of an equal number of members from the senate and the house of representatives appointed by the chairman of the legislative management.
2. The committee shall ensure that any legislative redistricting plan submitted to the legislative assembly for consideration must be of compact and contiguous territory and conform to all constitutional requirements with respect to population equality. The committee may adopt additional constitutionally recognized redistricting guidelines and principles to implement in preparing a legislative redistricting plan for submission to the legislative assembly.
3. The committee shall submit a redistricting plan and legislation to implement the plan to the legislative management by October 31, 2011.
4. A draft of a legislative redistricting plan created by the legislative council or a member of the legislative assembly is an exempt record as defined in section 44-04-17.1 until presented or distributed at a meeting of the legislative management or the legislative assembly. Any version of a redistricting plan created before the completion of the plan is an exempt record regardless of whether the completed plan is subsequently presented or distributed at a meeting.
5. The chairman of the legislative management shall request the governor to call a special session of the legislative assembly pursuant to section 7 of article V of the Constitution of North Dakota to allow the legislative assembly to adopt a redistricting plan to be implemented in time for use in the 2012 primary election and to address any other issue that may be necessary, including consideration of legislation in response to federal health care reform legislation.

**SECTION 2. EXPIRATION DATE.** This Act is effective through July 31, 2012, and after that date is ineffective.

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

Approved April 18, 2011  
Filed April 18, 2011

## CHAPTER 415

### HOUSE BILL NO. 1036

(Legislative Management)  
(Higher Education Committee)

AN ACT to provide for a legislative management study of developmental education issues affecting higher education.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - DEVELOPMENTAL EDUCATION.** During the 2011-12 interim, the legislative management shall conduct a study of developmental education issues. The study must include a review with the department of public instruction and the North Dakota university system of the secondary schools attended by students requiring developmental education, the reasons students need developmental education, efforts to reduce the number of developmental education students at higher education institutions, the alignment of elementary and secondary education standards, curriculum, and textbooks with higher education admissions standards, and the best practices for alleviating developmental education at higher education institutions. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

Approved April 19, 2011  
Filed April 20, 2011

## CHAPTER 416

### HOUSE BILL NO. 1199

(Representatives Keiser, Glassheim)  
(Senators Wardner, O'Connell)

AN ACT to provide for a study of guardianship services for vulnerable adults in the state; and to provide an appropriation.

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

**SECTION 1. GUARDIANSHIP SERVICES STUDY.** During the 2011-12 interim, the legislative management shall contract with a consultant to study guardianship services for vulnerable adults in the state. The study must include an analysis of the need for guardianship services in the state; the establishment of guardianships; petitioning costs and other costs associated with providing guardianship services; the entities responsible for guardianship costs; and the interaction between the courts, counties, state agencies, and guardianship organizations regarding guardianship services. The consultant shall provide periodic reports to the legislative management. The consultant shall present the final report and recommendations regarding the study to the legislative management before June 1, 2012. The legislative management shall report the findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

**SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$64,000, or so much of the sum as may be necessary, to the department of human services for the purpose of funding guardianship program enhancements, for the biennium beginning July 1, 2011, and ending June 30, 2013. This funding is to be considered one-time funding and is not considered to be base funding for the 2013-15 biennium.

Approved April 27, 2011  
Filed April 27, 2011



## CHAPTER 417

### HOUSE BILL NO. 1365

(Representatives DeKrey, Streyle, Thoreson)  
(Senators Klein, Oehlke, Olafson)

AN ACT to provide for a legislative management study of statutes of limitation and venue requirements for civil actions in North Dakota.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - STATUTES OF LIMITATION AND VENUE REQUIREMENTS FOR CIVIL ACTIONS.** During the 2011-12 interim, the legislative management shall consider studying statutes of limitation and venue requirements for civil actions in North Dakota. The study must include a review of the limitation on the length of time that has passed since a cause of action arose and whether the time limitations in current law remain appropriate or should be changed, and the extent to which claims are filed in North Dakota courts for claims otherwise prohibited in other states due to the relevant statute of limitation having expired. The study also must review the venue requirements for bringing a civil action in North Dakota and whether the venue requirements should be amended to limit claims being brought in this state by nonresidents who have no connection to this state. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

Approved March 29, 2011  
Filed March 29, 2011

## CHAPTER 418

### HOUSE BILL NO. 1375

(Representative DeKrey)

AN ACT to provide for a legislative management study of national guard member benefits.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - NATIONAL GUARD MEMBER BENEFITS.** During the 2011-12 interim, the legislative management shall consider studying the benefits offered in this and other states to national guard members, including life insurance coverage. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

Approved April 4, 2011

Filed April 4, 2011

## CHAPTER 419

### HOUSE BILL NO. 1386

(Representatives Onstad, Kempenich, Delmore)  
(Senators Andrist, Warner)

AN ACT to provide for a legislative management study and a report from the insurance department.

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

#### **SECTION 1. LEGISLATIVE MANAGEMENT STUDY - REPORT FROM INSURANCE DEPARTMENT.**

1. During the 2011-12 interim, the legislative management shall consider studying whether steps can be taken to improve health care service providers' access to third-party payer reimbursement network systems in order to improve North Dakotans' access to health care services and to contain their health care costs and out-of-pocket expenses. For purposes of this study, health care services include major medical as well as dental and vision services. The study may include consideration of:
  - a. Whether it would improve patients' freedom of choice by allowing all health care service providers the opportunity to be included in network systems and negotiating deeper discounts with third-party payers;
  - b. Whether a third-party payer for health care services should have the ability to deny a health care service provider the right to provide services or to negotiate a contract for services that do not cover the the provider's entire scope of practice;
  - c. Whether current practices in preferred provider arrangements allow third-party payers to interfere with a patient's continuity of care; and
  - d. The positive or negative impact any changes in the current practice may have on:
    - (1) Insurance companies doing business in the state, including managed care companies and health management organizations; and
    - (2) Health insurance premiums.
2. As part of the study, the insurance department may assist the legislative management by gathering information regarding current practices, including whether health care providers are being denied provider contracts by insurance companies and other third-party payers. The department shall make periodic reports to the legislative management on the status of this information gathering.
3. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

Approved April 20, 2011  
Filed April 20, 2011

## CHAPTER 420

### HOUSE BILL NO. 1417

(Representatives Mock, Trottier, Anderson, Hogan)  
(Senators Uglen, Mathern)

AN ACT to provide for a legislative management study.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - SALES TAX EXEMPTION FOR PURCHASE BY CLINICS.** The legislative management shall consider studying, during the 2011-12 interim, the feasibility and desirability of exempting purchases by health-related clinics from sales and use taxes. The study must address under what circumstances, if any, purchases by health-related clinics should be exempt from sales and use taxes. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-third legislative assembly.

Approved April 25, 2011

Filed April 25, 2011

## CHAPTER 421

### HOUSE BILL NO. 1442

(Representatives Ruby, Gruchalla)

AN ACT to provide for a legislative management study relating to consistency of regulations for drivers and motor vehicles.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - DRIVERS AND MOTOR VEHICLES.** During the 2011-12 interim, the legislative management shall consider studying the regulations of drivers and of motor vehicles in the North Dakota Century Code for consistency, clarity, and substance. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

Approved April 25, 2011

Filed April 25, 2011

## CHAPTER 422

### SENATE BILL NO. 2125

(Government and Veterans Affairs Committee)  
(At the request of the Commission on Uniform State Laws)

AN ACT to provide for a legislative management study of the feasibility and desirability of adopting the Uniform Electronic Recording of Custodial Interrogations Act.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - UNIFORM ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS ACT.** During the 2011-12 interim, the legislative management shall consider studying the feasibility and desirability of adopting the Uniform Electronic Recording of Custodial Interrogations Act. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-third legislative assembly.

Approved April 19, 2011  
Filed April 19, 2011

## CHAPTER 423

### SENATE BILL NO. 2234

(Senators Sitte, Cook, Wanzek)  
(Representatives Brandenburg, Headland, Pollert)

AN ACT to provide for a legislative management study relating to mechanisms for improving coordination and consultation regarding federal designation over land or water resources in North Dakota.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - LAND OR WATER RESOURCES.** The legislative management shall consider studying, during the 2011-12 interim, various mechanisms for improving coordination and consultation regarding federal designation over land or water resources in North Dakota. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-third legislative assembly.

Approved April 19, 2011  
Filed April 20, 2011

## CHAPTER 424

### SENATE BILL NO. 2305

(Senator Nelson)  
(Representatives Hawken, Mock)

AN ACT to provide for a legislative management study relating to the extension of juvenile court jurisdiction and the extent of juvenile court jurisdiction in other states.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - JUVENILE COURT JURISDICTION.** The legislative management shall consider studying, during the 2011-12 interim, the issue of juvenile court jurisdiction and the adult court transfer process and whether any additional juvenile court jurisdictional extensions would serve the best interests of the child and the public in cases in which the child is close to the age of majority. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-third legislative assembly.

Approved April 26, 2011  
Filed April 26, 2011



## CHAPTER 425

### SENATE BILL NO. 2318

(Senators Warner, Nodland, Wardner)  
(Representatives S. Meyer, Onstad)

AN ACT to provide for a legislative management study relating to carbon dioxide storage easements and to the duration of carbon dioxide storage easements.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - CARBON DIOXIDE STORAGE EASEMENTS.** The legislative management shall consider studying, during the 2011-12 interim, carbon dioxide storage easements and the duration of carbon dioxide storage easements. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-third legislative assembly.

Approved April 19, 2011  
Filed April 19, 2011

## CHAPTER 426

### SENATE BILL NO. 2367

(Senators Larsen, Sitte, Wanzek)  
(Representatives Grande, Koppelman, Ruby)

AN ACT to provide for a legislative management study relating to divorce reform and education.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - DIVORCE REFORM AND EDUCATION.** During the 2011-12 interim, the legislative management shall consider studying the physical, emotional, and financial effects associated with divorce involving dependent children. The legislative management shall offer legislative policy solutions, including divorce reform legislation and marriage and relational education, which will lead to increasing the number of dependent children living in intact families. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

Approved April 26, 2011  
Filed April 26, 2011

## CHAPTER 427

### HOUSE BILL NO. 1033

(Legislative Management)  
(Higher Education Committee)

AN ACT to amend and reenact sections 54-44.1-04 and 54-44.1-06 of the North Dakota Century Code, relating to budget requests and block grant appropriations for the North Dakota university system; and to provide for a legislative management study.

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

**SECTION 1. AMENDMENT.** Section 54-44.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**54-44.1-04. (Effective through July 31, 2014~~2013~~) Budget estimates of budget units filed with the office of the budget - Deadline.**

The head of each budget unit, not later than July fifteenth of each year next preceding the session of the legislative assembly, shall submit to the office of the budget, estimates of financial requirements of the person's budget unit for the next two fiscal years, on the forms and in the manner prescribed by the office of the budget, with such explanatory data as is required by the office of the budget and such additional data as the head of the budget unit wishes to submit. The budget estimates for the North Dakota university system must include block grants for the university system for a base funding component and for an initiative funding component for specific strategies or initiatives and a budget estimate for an asset funding component for renewal and replacement of physical plant assets at the institutions of higher education. The estimates so submitted must bear the approval of the board or commission of each budget unit for which a board or commission is constituted. The director of the budget in the director's discretion may extend the filing date for any budget unit if the director finds there is some circumstance that makes it advantageous to authorize the extension. If a budget unit has not submitted its estimate of financial requirements by the required date or within a period of extension set by the director of the budget, the director of the budget shall prepare the budget unit's estimate of financial requirements except the estimate may not exceed ninety percent of the budget unit's previous biennial appropriation. The director of the budget or a subordinate officer as the director designates shall examine the estimates and shall afford to the heads of budget units reasonable opportunity for explanation in regard thereto and, when requested, shall grant to the heads of budget units a hearing thereon which must be open to the public.

**(Effective after July 31, 2014~~2013~~) Budget estimates of budget units filed with the office of the budget - Deadline.** The head of each budget unit, not later than July fifteenth of each year next preceding the session of the legislative assembly, shall submit to the office of the budget, estimates of financial requirements of the person's budget unit for the next two fiscal years, on the forms and in the manner prescribed by the office of the budget, with such explanatory data as is required by the office of the budget and such additional data as the head of the budget unit wishes to submit. The estimates so submitted must bear the approval of the board or commission of each budget unit for which a board or commission is constituted. The

director of the budget may extend the filing date for any budget unit if the director finds there is some circumstance that makes it advantageous to authorize the extension. If a budget unit has not submitted its estimate of financial requirements by the required date or within a period of extension set by the director of the budget, the director of the budget shall prepare the budget unit's estimate of financial requirements except the estimate may not exceed ninety percent of the budget unit's previous biennial appropriation. The director of the budget or a subordinate officer as the director shall designate shall examine the estimates and shall afford to the heads of budget units reasonable opportunity for explanation in regard thereto and, when requested, shall grant to the heads of budget units a hearing thereon which must be open to the public.

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

**54-44.1-06. (Effective through July 31, ~~2014~~2013) Preparation of the budget data - Contents.**

The director of the budget, through the office of the budget, shall prepare budget data which must contain and include the following:

1. Summary statements of the financial condition of the state, accompanied by the detailed schedules of assets and liabilities as the director of the budget determines desirable, which must include the following:
  - a. Summary statements of fund balances and assets showing in detail for each fund the surplus or deficit at the beginning of each of the two fiscal years of the previous biennium and the first fiscal year of the present biennium, the actual revenue for those years, the total appropriations for the previous and present biennium, and the total expenditures for those fiscal years; and
  - b. Similar summary statements of the estimated fund balances and assets for the current fiscal year and each of the fiscal years of the next biennium.

Summary statements may include a comparative consolidated balance sheet showing all the assets and liabilities of the state and the surplus or deficit, as the case may be, at the close of the first fiscal year of the current biennium.

2. Statements of actual revenue for the previous biennium, the first year of the present biennium, and the estimated revenue of the current fiscal year and of the next biennium, and a statement of unappropriated surplus expected to have accrued in the state treasury at the beginning of the next fiscal year. The statement of unappropriated surplus for the general fund must reflect any projected deficiency appropriations relating to expenditures from the general fund for the present biennium. The statements of revenue and estimated revenue must be classified by sources and by budget unit collecting them. Existing sources of revenue must be analyzed as to their equity, productivity, and need for revision, and any proposed new sources of revenue must be explained.
3. Summary statements of expenditures of the previous biennium and first year of the present biennium, itemized by budget units and classified as prescribed by the director of the budget.

4. Detailed comparative statements of expenditures and requests for appropriations by funds, budget units and classification of expenditures, showing the expenditures for the previous biennium, the first fiscal year of the present biennium, the budget of the current biennium, and the governor's recommendation for appropriations for each budget unit for the next biennium, all distributed according to the prescribed classification of expenditures. Following the lists of actual and proposed expenditures of each budget unit there must be a brief explanation of the functions of the unit and comments on its policies and plans and on any considerable differences among the amounts recommended, with any descriptive, quantitative, comparative, and other data as to work done, unit costs, and like information as may be considered necessary or desirable. For capital outlay expenditures involving construction projects to be completed in two or more fiscal years, there must be shown the total estimated cost of each such project and the amount thereof recommended to be appropriated and expended in each ensuing fiscal year until completion of the project. Capital outlay needs may be projected for at least two years beyond the period covered by the budget.
5. A detailed statement showing the estimate of all moneys required to be raised or appropriated for the payment of interest upon the funded debt of the state and its other obligations bearing interest, and the amount of money required to be contributed in the two next ensuing fiscal years to the general sinking funds maintained for the redemption and payment of the debts of the state.
6. A summary statement of the unappropriated fund balance estimated to be available at the beginning of the next biennium, and the estimated revenue of the next biennium, as compared with the total recommended amounts of appropriation for all classes of expenditures for the next biennium, and if the total of the recommended expenditures exceeds the total of the estimated resources, recommendations as to how the deficiency is to be met and estimates of any proposed additional revenue.
7. Drafts of proposed general and special appropriations acts embodying the budget data and recommendations of the governor for appropriations for the next biennium and drafts of such revenues and other acts recommended by the governor for putting into effect the proposed financial plan. The recommended general appropriation for each budget unit must be specified in a separate section of the general appropriations act. The draft of the proposed appropriations act for the North Dakota university system must include block grants for a base funding appropriation and for an initiative funding appropriation for specific strategies or initiatives and an appropriation for asset funding for renewal and replacement of physical plant assets at the institutions of higher education.
8. A list of every individual asset or service, excluding real estate, with a value of at least fifty thousand dollars and every group of assets and services comprising a single system with a combined value of at least fifty thousand dollars acquired through a capital or operating lease arrangement or debt financing arrangement by a state agency or institution. The list must include assets or services acquired in the current biennium and anticipated assets or services to be acquired in the next biennium.
9. Any other information as the director of the budget determines desirable or as is required by law.

**(Effective after July 31, 2011) Preparation of the budget data - Contents.**

The director of the budget, through the office of the budget, shall prepare budget data which must contain and include the following:

1. Summary statements of the financial condition of the state, accompanied by the detailed schedules of assets and liabilities as the director of the budget determines desirable, which must include the following:
  - a. Summary statements of fund balances and assets showing in detail for each fund the surplus or deficit at the beginning of each of the two fiscal years of the previous biennium and the first fiscal year of the present biennium, the actual revenue for those years, the total appropriations for the previous and present biennium, and the total expenditures for those fiscal years; and
  - b. Similar summary statements of the estimated fund balances and assets for the current fiscal year and each of the fiscal years of the next biennium.

Summary statements may include a comparative consolidated balance sheet showing all the assets and liabilities of the state and the surplus or deficit, as the case may be, at the close of the first fiscal year of the current biennium.

2. Statements of actual revenue for the previous biennium, the first year of the present biennium, and the estimated revenue of the current fiscal year and of the next biennium, and a statement of unappropriated surplus expected to have accrued in the state treasury at the beginning of the next fiscal year. The statement of unappropriated surplus for the general fund must reflect any projected deficiency appropriations relating to expenditures from the general fund for the present biennium. The statements of revenue and estimated revenue must be classified by sources and by budget unit collecting them. Existing sources of revenue must be analyzed as to their equity, productivity, and need for revision, and any proposed new sources of revenue must be explained.
3. Summary statements of expenditures of the previous biennium and first year of the present biennium, itemized by budget units and classified as prescribed by the director of the budget.
4. Detailed comparative statements of expenditures and requests for appropriations by funds, budget units and classification of expenditures, showing the expenditures for the previous biennium, the first fiscal year of the present biennium, the budget of the current biennium, and the governor's recommendation for appropriations for each budget unit for the next biennium, all distributed according to the prescribed classification of expenditures. Following the lists of actual and proposed expenditures of each budget unit there must be a brief explanation of the functions of the unit and comments on its policies and plans and on any considerable differences among the amounts recommended, with any descriptive, quantitative, comparative, and other data as to work done, unit costs, and like information as may be considered necessary or desirable. For capital outlay expenditures involving construction projects to be completed in two or more fiscal years, there must be shown the total estimated cost of each such project and the amount thereof recommended to be appropriated and expended in each ensuing fiscal year until completion of the project. Capital outlay needs may be projected for at least two years beyond the period covered by the budget.

5. A detailed statement showing the estimate of all moneys required to be raised or appropriated for the payment of interest upon the funded debt of the state and its other obligations bearing interest, and the amount of money required to be contributed in the two next ensuing fiscal years to the general sinking funds maintained for the redemption and payment of the debts of the state.
6. A summary statement of the unappropriated fund balance estimated to be available at the beginning of the next biennium, and the estimated revenue of the next biennium, as compared with the total recommended amounts of appropriation for all classes of expenditures for the next biennium, and if the total of the recommended expenditures exceeds the total of the estimated resources, recommendations as to how the deficiency is to be met and estimates of any proposed additional revenue.
7. Drafts of a proposed general appropriations act and special appropriations acts embodying the budget data and recommendations of the governor for appropriations for the next biennium and drafts of such revenues and other acts recommended by the governor for putting into effect the proposed financial plan. The recommended general appropriation for each budget unit must be specified in a separate section of the general appropriations act.
8. A list of every individual asset or service, excluding real estate, with a value of at least fifty thousand dollars and every group of assets and services comprising a single system with a combined value of at least fifty thousand dollars acquired through a capital or operating lease arrangement or debt financing arrangement by a state agency or institution. The list must include assets or services acquired in the current biennium and anticipated assets or services to be acquired in the next biennium.
9. Any other information as the director of the budget determines desirable or as is required by law.

### **SECTION 3. LEGISLATIVE MANAGEMENT STUDY - HIGHER EDUCATION.**

During the 2011-12 interim, the legislative management chairman may appoint an interim higher education committee to study issues affecting higher education. The study may include a review of:

1. Higher education funding mechanisms, including:
  - a. Performance-based funding methods.
  - b. Funding based on student enrollment calculations.
  - c. Funding from grants.
  - d. Funding based on program cost analysis.
2. Higher education budget methods, including:
  - a. Block grant funding for operations based on institution type.
  - b. Block grant funding for specific initiatives based on institution type.
  - c. Funding for capital asset maintenance, including deferred maintenance.

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

Approved May 9, 2011  
Filed May 10, 2011



## CHAPTER 428

### HOUSE BILL NO. 1034

(Legislative Management)  
(Higher Education Committee)

AN ACT to amend and reenact section 54-44.1-11 of the North Dakota Century Code, relating to the cancellation of unexpended appropriations for the North Dakota university system.

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

**SECTION 1. AMENDMENT.** Section 54-44.1-11 of the North Dakota Century Code is amended and reenacted as follows:

**54-44.1-11. (Effective through July 31, ~~2011~~2013) Office of management and budget to cancel unexpended appropriations - When they may continue.**

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

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

**(Effective after July 31, 2011)** **Office of management and budget to cancel unexpended appropriations - When they may continue.** The office of management and budget, thirty days after the close of each biennial period, shall cancel all unexpended appropriations or balances of appropriations after the expiration of the biennial period during which they became available under the law. Unexpended appropriations for the state historical society are not subject to this section and the state historical society shall report on the amounts and uses of funds carried over from one biennium to the appropriations committees of the next subsequent legislative assembly. The chairmen of the appropriations committees of the senate and house of representatives of the legislative assembly with the office of the budget may continue appropriations or balances in force for not more than two years after the expiration of the biennial period during which they became available upon recommendation of the director of the budget for:

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

Approved April 19, 2011  
Filed April 20, 2011

## CHAPTER 429

### HOUSE BILL NO. 1031

(Legislative Management)  
(Government Services Committee)

AN ACT to create and enact a new section to chapter 54-44.3 of the North Dakota Century Code, relating to a state compensation philosophy statement; to provide for implementation of changes to the classified employee compensation system; to provide for status reports to the sixty-second legislative assembly and to the budget section; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 54-44.3 of the North Dakota Century Code is created and enacted as follows:

##### Compensation philosophy statement.

The compensation program for classified state employees must be designed to recruit, retain, and motivate a quality workforce for the purpose of providing efficient and effective services to the citizens of North Dakota. For purposes of this section, "compensation" is defined as base salary and related fringe benefits.

The compensation program must:

1. Provide a competitive employee compensation package based on job content evaluation, internal equity, and external competitiveness balanced by the state's fiscal conditions.
2. Be based on principles of fairness and equity.
3. Include a consistent compensation policy which allows for multiple pay structures to address varying occupational specialties.
4. Set the external competitiveness target for salary range midpoints at a competitive level of relevant labor markets. For purposes of this section, "relevant labor markets" is defined as the labor markets from which the state attracts employees in similar positions and the labor markets to which the state loses employees in similar positions.
5. Include a process for providing compensation adjustments that considers a combination of factors, including achievement of performance objectives or results, competency determinations, recognition of changes in job content, and acquisition and application of advanced skills or knowledge.
6. Provide funding for compensation adjustments based on the dollar amounts determined necessary to provide competitive compensation in accordance with the state's compensation philosophy. Funding for compensation adjustments may not be provided as a statewide percentage increase attributable to all employees nor as part of a statewide pool of funds designated for addressing equity issues.

7. Consider the needs of the state as an employer and the tax effect on North Dakota citizens.

The office of management and budget shall develop and consistently administer the compensation program for classified state employees and ensure that state agencies adhere to the components of the state's compensation philosophy. The office of management and budget shall regularly conduct compensation comparisons to ensure that the state's compensation levels are competitive with relevant labor markets.

The legislative assembly recognizes the importance of providing annual compensation adjustments to employees based on performance and equity to maintain the market competitiveness of the compensation system.

**SECTION 2. COMPENSATION SYSTEM INITIATIVES - IMPLEMENTATION.** The office of management and budget shall implement the following initiatives relating to the classified state employee compensation system for the period beginning with the effective date of this Act and ending June 30, 2011:

1. Adjust the methods used to determine classified state employee classifications by:
  - a. Simplifying the classification and reclassification process.
  - b. Revising classification and reclassification forms to collect additional information, including information from the employee.
  - c. Revising classification specifications to ensure duties and responsibilities increase in complexity within a classification series and that minimum qualifications are appropriate.
  - d. Communicating and educating employees on the classification process.
2. Minimize salary inequities both within an agency and within state government by:
  - a. Providing job evaluation training for human resource management services job evaluators.
  - b. Evaluating, reviewing, and refining common job classifications to create a framework of classified positions.
  - c. Reviewing unique job classifications and developing a classification framework that ensures internal equity exists and that all classifications are appropriate.
  - d. Identifying broad compensation system classifications and determining the appropriateness of the classification.
  - e. Identifying jobs that are unique to an agency and assessing the appropriateness of these jobs being included in statewide classifications.
3. Develop appropriate market comparisons and methods to set pay grade minimums, maximums, and midpoints by:

- a. Redesigning the grade structure and reassigning common and unique job classifications.
  - b. Customizing salary surveys and market analyses for the determined relevant labor market.
  - c. Identifying job family and occupational groups that require different pay strategies from regular pay classifications.
  - d. Developing salary ranges for the general pay structure and for job family and occupational group structures.
  - e. Decreasing the width of salary ranges and performing cost-to-implement analyses.
  - f. Performing statewide, agency, and job family and occupational group internal equity analyses.
4. Develop cost estimates for potential fringe benefits adjustments relating to:
- a. Increasing the basic life insurance benefit from the current level of one thousand three hundred dollars to an amount equal to each employee's annual salary level or a benefit level of at least twenty-five thousand dollars.
  - b. Implementing a long-term disability benefit separate from the pension plan.
  - c. Requiring employees to share in the cost of health care insurance premiums.
5. Expand recruitment and retention tools by:
- a. Developing guidelines and amounts for recruitment and retention bonuses.
  - b. Defining the type of performance to be recognized and rewarded through a performance bonus.
  - c. Reviewing the appropriateness of performance bonus maximums.
  - d. Continuing to assist agencies in determining the appropriate utilization of nonmonetary rewards for employee retention efforts.
  - e. Developing a targeted retention program for employees with three to five years of service.
6. Develop a consistent long-term salary increase administration policy by determining the funding request for salary adjustments using a single funding allocation method that includes performance and equity components.
7. Analyze the effect of:
- a. Appropriating funds to agencies for accrued employee annual leave and sick leave.
  - b. Defining "vacant" positions and excluding long-term vacant positions from agency budget requests.

**SECTION 3. OFFICE OF MANAGEMENT AND BUDGET STATUS REPORTS TO JOINT LEGISLATIVE COMMITTEE.** The office of management and budget shall provide periodic reports to a joint committee during the sixty-second legislative assembly on the status of implementation of the compensation system changes in accordance with section 2 of this Act for the period beginning with the effective date of this Act and ending with the adjournment of the sixty-second legislative session. The reports must include information on any estimated cost increases resulting from the changes in future bienniums.

**SECTION 4. OFFICE OF MANAGEMENT AND BUDGET STATUS REPORTS TO BUDGET SECTION.** The office of management and budget shall provide periodic reports to the budget section on the status of implementation of the compensation system changes in accordance with section 2 of this Act during the 2011-12 interim.

**SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 19, 2011  
Filed April 19, 2011

## CHAPTER 430

### HOUSE BILL NO. 1075

(Representative Glassheim)

(Senator Andrist)

(At the request of the State Historical Society of North Dakota)

AN ACT to amend and reenact subdivision b of subsection 3 of section 54-46-02 and section 54-46-07 of the North Dakota Century Code, relating to the definition of records and the recovery of records.

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

**SECTION 1. AMENDMENT.** Subdivision b of subsection 3 of section 54-46-02 of the North Dakota Century Code is amended and reenacted as follows:

- b. A record of the state legislative assembly held by an agency.

**SECTION 2. AMENDMENT.** Section 54-46-07 of the North Dakota Century Code is amended and reenacted as follows:

**54-46-07. Records not to be ~~damaged or destroyed~~ or removed.**

All records made or received by or under the authority of or coming into the custody, control, or possession of public officials of this state in the course of their public duties are the property of the state and may not be mutilated, destroyed, transferred, removed, sold, or otherwise damaged or disposed of, in whole or in part, except as provided by law. Each state agency and political subdivision of this state shall notify the state records management administrator of unlawful actions affecting records. Public records that have been unlawfully removed must be returned to the office of origin or to the state archivist.

Approved April 8, 2011

Filed April 11, 2011

## CHAPTER 431

### SENATE BILL NO. 2109

(Government and Veterans Affairs Committee)  
(At the request of the Public Employees Retirement System Board)

AN ACT to amend and reenact section 15-10-17, subsection 6 of section 39-03.1-11, sections 39-03.1-11.2 and 39-03.1-14.1, subsection 3 of section 54-52-02.1, section 54-52-03, subsections 3 and 6 of section 54-52-17, sections 54-52-27 and 54-52-28, subsection 3 of section 54-52.1-03, and subsection 3 of section 54-52.6-09 of the North Dakota Century Code, relating to special annuity purchases in the alternate retirement program for university system employees, surviving spouse payment options under the highway patrolmen's retirement plan, calculation of member service credit under the highway patrolmen's retirement plan, election of members to the public employees retirement system board, calculation of normal retirement date for peace officers and correctional officers under the public employees retirement system, payment of member account balances under the public employees retirement system, purchase of sick leave credit under the public employees retirement system, spousal elections to participate in the uniform group insurance program, reporting of employer pickups under the defined contribution retirement plan, and Internal Revenue Code compliance under the highway patrolmen's retirement plan and the public employees retirement system.

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

**SECTION 1. AMENDMENT.** Section 15-10-17 of the North Dakota Century Code is amended and reenacted as follows:

##### **15-10-17. Specific powers and duties of the state board of higher education.**

The state board of higher education has all the powers and shall perform all the duties necessary to the control and management of the institutions described in this chapter. In addition to the powers and duties specified in section 6 of article VIII of the Constitution of North Dakota, the board may:

1. a. Appoint and remove the president or other faculty head, and the professors, instructors, teachers, officers, and other employees of the several institutions under its control, and to fix their salaries within the limits of legislative appropriations therefor, and to fix the terms of office and to prescribe the duties thereof, provided that the consideration of the appointment or removal of any such personnel shall be in executive session if the board chooses unless the individual involved requests that the meeting be open to other individuals or to the public.
- b. Appoint and remove the commissioner of higher education, fix the commissioner's salary within the limits of legislative appropriations, and prescribe the commissioner's duties.
- c. Appoint and remove all university system office personnel, fix their salaries within the limits of legislative appropriations, fix their terms of office, and prescribe their duties.



2. Authorize the employment of law enforcement officers having concurrent jurisdiction with other law enforcement officers to enforce laws and regulations at its institutions.
3. Set tuition and fees.
4. a. Establish a retirement program as an alternative to chapter 15-39.1 for university system employees subject to the following guidelines:
  - (1) Benefits under the program must be provided through annuity contracts purchased by the board but which become the property of the participants;
  - (2) The cost of the annuity contracts must be defrayed by contributions made pursuant to rules of the state board of higher education;
  - (3) Eligible employees appointed before July 1, 1973, shall participate in the alternate retirement program only by their individual election. When the electing eligible employee is a member of the teachers' fund for retirement, the employee's assessments and employer's contributions together with interest credited at the current rate for one-year certificates then being paid by the Bank of North Dakota must be transferred to the employee's account in the alternate program. The election must be made before July 1, 1980, and shall relinquish all rights the eligible employee or the employee's beneficiary may have to benefits provided in chapters 15-39 and 15-39.2; and
  - (4) Employees of the university system who are members of the public employees retirement system under chapter 54-52 or 54-52.6 and who become entitled to participate in the alternate retirement program are entitled to a special annuity purchase in the alternate retirement program in accordance with this subdivision. An eligible employee who consents to have that employee's contribution included is entitled to have that employee's contribution and employer's contribution, with interest, in the public employees retirement system fund, used by the retirement board of the public employees retirement system to purchase for that employee an annuity in the alternate retirement program in lieu of any other rights under the public employees retirement fund. However, before the employer's contribution may be used for an annuity purchase, the employee's combined years of service with the public employees retirement system and the alternate retirement program must equal or exceed the years of service necessary to be eligible for retirement benefits under the public employees retirement system. An employee who transferred from the public employees retirement system before March 30, 1987, and who received a refund of that employee's contribution is entitled to have the employer's contribution, with interest, used to purchase an annuity even if that employee did not purchase an annuity in the alternate employee program with the employee's contribution. If an employee makes the election allowed under this subdivision, that employee relinquishes all rights the employee or any of the employee's beneficiaries may have had to benefits provided under ~~chapter~~chapters 54-52 and 54-52.6.

- b. Provide for the administration of the alternate retirement program and establish rules for the program consistent with this subsection. This subsection does not derogate any existing retirement programs approved by the board.
5. Determine policy for purchasing by the university system in coordination with the office of management and budget as provided by law.
6. Establish by rule an early retirement program for faculty and officers of the board as defined by the board. The limitations on severance pay pursuant to section 54-14-04.3 and on requiring the employee to pay contributions to continue on the state uniform group insurance program upon retirement or upon termination of employment pursuant to section 54-52.1-03 do not apply to the early retirement program.
7. Adopt rules to protect the confidentiality of student records, medical records, and, consistent with section 44-04-18.4, trade secret, proprietary, commercial, and financial information.
8. Authorize and encourage university system entities to enter into partnerships, limited liability companies, joint ventures, or other contractual arrangements with private business and industry for the purpose of business or industrial development or fostering basic and applied research or technology transfer.
9. Adopt rules promoting research, encouraging development of intellectual property and other inventions and discoveries by university system employees, and protecting and marketing the inventions and discoveries. The rules must govern ownership or transfer of ownership rights and distribution of income that may be derived from an invention or discovery resulting from research or employment in the university system. The rules may provide for transfer of ownership rights or distribution of income to a private, nonprofit entity created for the support of the university system or one of its institutions.

**SECTION 2. AMENDMENT.** Subsection 6 of section 39-03.1-11 of the North Dakota Century Code is amended and reenacted as follows:

6. If before retiring a contributor dies after completing ten years of eligible employment, the board shall pay the contributor's accumulated deductions to the contributor's designated beneficiary as provided in this subsection. If the contributor has designated an alternate beneficiary with the surviving spouse's written consent, the board shall pay the contributor's account balance to the named beneficiary. If the contributor has named more than one primary beneficiary, the board shall pay the contributor's account balance to the named primary beneficiaries in the percentages designated by the contributor or, if the contributor has not designated a percentage for the beneficiaries, in equal percentages. If one or more of the primary beneficiaries has predeceased the contributor, the board shall pay the predeceased beneficiary's share to the remaining primary beneficiaries. If there are no remaining primary beneficiaries, the board shall pay the contributor's account balance to the contingent beneficiaries in the same manner. If there are no remaining designated beneficiaries, the board shall pay the contributor's account balance to the contributor's estate. If the contributor has not designated an alternate beneficiary under this section or the surviving spouse is the beneficiary, the surviving spouse of the contributor may select one of the following optional forms of payment:

- a. A lump sum payment of the contributor's accumulated deductions as of the date of death.
- b. ~~Payments for sixty months as calculated for the deceased contributor as if the contributor were age fifty five at the date of death.~~
- e. Payment of a monthly retirement benefit equal to fifty percent of the deceased contributor's accrued normal retirement benefits until the spouse dies.

**SECTION 3. AMENDMENT.** Section 39-03.1-11.2 of the North Dakota Century Code is amended and reenacted as follows:

**39-03.1-11.2. Internal Revenue Code compliance.**

~~4.~~The board shall administer the plan in compliance with ~~section 415, section 401(a)(9), section 401(a)(17), and section 401(a)(31)~~the following sections of the Internal Revenue Code in effect on August 1, ~~2009~~2011, as it applies for governmental plans.

- ~~2-1.~~ Section 415, including the defined benefit dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code.
  - ~~a.~~ The defined benefit dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code, as approved by the legislative assembly, must be adjusted under section 415(d) of the Internal Revenue Code, effective January first of each year following a regular legislative session. The adjustment of the defined benefit dollar limitation under section 415(d) applies to participating members who have had a separation from employment, but that member's benefit payments may not reflect the adjusted limit prior to January first of the calendar year in which the adjustment applies.
  - ~~3- b.~~ If a participating member's benefit is increased by plan amendment after the commencement of benefit payments, the member's annual benefit may not exceed the defined benefit dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code, as adjusted under section 415(d) for the calendar year in which the increased benefit is payable.
  - ~~4- c.~~ If a participating member is, or ever has been, a participant in another defined benefit plan maintained by the employer, the sum of the participant's annual benefits from all the plans may not exceed the defined benefit dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code. If the participating member's employer-provided benefits under all such defined benefit plans would exceed the defined benefit dollar limitation, the benefit must be reduced to comply with section 415 of the Internal Revenue Code. This reduction must be made pro rata between the plans, in proportion to the participating member's service in each plan.
2. The minimum distribution rules under section 401(a)(9) of the Internal Revenue Code, including the incidental death benefit requirements under section 401(a)(9)(G), and the regulations issued under that provision to the extent applicable to governmental plans. Accordingly, benefits must be distributed or begin to be distributed no later than a member's required beginning date, and the required minimum distribution rules override any inconsistent provision of this chapter. A member's required beginning date is

April first of the calendar year following the later of the calendar year in which the member attains age seventy and one-half or terminates employment.

3. The annual compensation limitation under section 401(a)(17) of the Internal Revenue Code, as adjusted for cost-of-living increases under section 401(a)(17)(B).
4. The rollover rules under section 401(a)(31) of the Internal Revenue Code. Accordingly, a distributee may elect to have an eligible rollover distribution, as defined in section 402(c)(4) 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.
5. If the plan of retirement benefits set forth in this chapter is terminated or discontinued, the rights of all affected participating members to accrued retirement benefits under this chapter as of the date of termination or discontinuance is nonforfeitable, to the extent then funded.

**SECTION 4. AMENDMENT.** Section 39-03.1-14.1 of the North Dakota Century Code is amended and reenacted as follows:

**39-03.1-14.1. Multiple plan membership - Eligibility for benefits - Amount of benefits.**

1. For the purpose of determining eligibility for benefits under this chapter, a member's years of service is the total of the years of service earned under this chapter and the years of service employment or years of service credit earned in any number of the following, the total of which may not exceed twelve months of credit per year:
  - a. The public employees retirement system.
  - b. The teachers' fund for retirement.
  - c. The teachers' insurance and annuity association of America - college retirement equities fund (TIAA-CREF), for service credit earned while employed by North Dakota institutions of higher education.
2. If a member terminates eligible employment under this chapter, if that member has not received a refund of the member's accumulated deductions, and if that member begins eligible employment in a plan described in subdivision a or b of subsection 1, that member may elect to remain an inactive member of the system without refund of the member's accumulated deductions. The election must be made within ninety days after beginning the eligible employment. The board shall terminate the inactive status of a member under this subsection if the member gains eligible employment under this chapter or if the member terminates eligible employment under a plan described in subdivision a or b of subsection 1.
3. Pursuant to rules adopted by the board, a member who has service credit in the system and in any of the alternate plans described in subdivision a or b of subsection 1 is entitled to benefits under this chapter. The employee may elect to have benefits calculated using the benefit formula in section 39-03.1-11 under either of the following calculation methods:

- a. By using the average of the highest salary received by the member for any ~~consecutive~~ thirty-six months employed during the last one hundred twenty months of employment in the highway patrolmen's retirement system. If the participating member has worked for less than thirty-six months at retirement, the final average salary is the average salary for the total months of employment.
- b. Using the average of the highest salary received by the member for any thirty-six ~~consecutive~~ months during the last one hundred twenty months of employment, with service credit not to exceed one month in any month when combined with the service credit earned in the alternate retirement system.

The board shall calculate benefits for an employee under this subsection by using only those years of service employment earned under this chapter.

**SECTION 5. AMENDMENT.** Subsection 3 of section 54-52-02.1 of the North Dakota Century Code is amended and reenacted as follows:

3. Notwithstanding any other provision of this chapter, a political subdivision of this state not currently participating in the public employees retirement system may not become a participant in the retirement system until an actuarial study is performed under the direction of the board to calculate the required employer contribution. ~~The for any past service liability and the required employer contribution must be an amount determined sufficient to fund the normal cost and amortize and fund any past service liability over a period not to exceed thirty years as determined by the board.~~ Any fees incurred in performing the actuarial study must be paid for by the political subdivision in a manner determined by the board.

<sup>134</sup> **SECTION 6. AMENDMENT.** Section 54-52-03 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-03. Governing authority.**

A state agency is hereby created to constitute the governing authority of the system to consist of a board of seven persons known as the retirement board. No more than one elected member of the board may be in the employ of a single department, institution, or agency of the state or in the employ of a political subdivision. No employee of the public employees retirement system or the state retirement and investment office may serve on the board.

1. One member of the board must be appointed by the governor to serve a term of five years. The appointee must be a North Dakota citizen who is not a state or political subdivision employee and who by experience is familiar with money management. The citizen member is chairman of the board.
2. One member of the board must be appointed by the attorney general from the attorney general's legal staff and shall serve a term of five years.
3. The state health officer appointed under section 23-01-05 is a member of the board.

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<sup>134</sup> Section 54-52-03 was also amended by section 6 of Senate Bill No. 2022, chapter 48.

4. Three board members must be elected by and from among the active participating members, members of the retirement plan established under chapter 54-52.6, members of the retirement plan established under chapter 39-03.1, and members of the job service North Dakota retirement plan. Employees who have terminated their employment for whatever reason are not eligible to serve as elected members of the board under this subsection. Board members must be elected to a five-year term pursuant to an election called by the board. Notice of board elections must be given to all active participating members. The time spent in performing duties as a board member may not be charged against any employee's accumulated annual or any other type of leave.
5. One board member must be elected by and from among those persons who are receiving retirement benefits ~~or who are eligible to receive deferred-vested retirement benefits~~ under this chapter. The board shall call the election and must give prior notice of the election to the persons eligible to participate in the election pursuant to this subsection. The board member shall serve a term of five years.
6. The members of the board are entitled to receive sixty-two dollars and fifty cents per day compensation and necessary mileage and travel expenses as provided in sections 44-08-04 and 54-06-09. This is in addition to any other pay or allowance due the chairman or a member, plus an allowance for expenses they may incur through service on the board.
7. A board member shall serve a five-year term and until the board member's successor qualifies. Each board member is entitled to one vote, and four of the seven board members constitute a quorum. Four votes are necessary for resolution or action by the board at any meeting.

**SECTION 7. AMENDMENT.** Subsections 3 and 6 of section 54-52-17 of the North Dakota Century Code are amended and reenacted as follows:

3. Retirement dates are defined as follows:
  - a. Normal retirement date, except for a national guard security officer or firefighter or a peace officer or correctional officer employed by the bureau of criminal investigation or by a political subdivision, is:
    - (1) The first day of the month next following the month in which the member attains the age of sixty-five years; or
    - (2) When the member has a combined total of years of service credit and years of age equal to eighty-five and has not received a retirement benefit under this chapter.
  - b. Normal retirement date for a national guard security officer or firefighter is the first day of the month next following the month in which the national guard security officer or firefighter attains the age of fifty-five years and has completed at least three consecutive years of employment as a national guard security officer or firefighter immediately preceding retirement.
  - c. Normal retirement date for a peace officer or correctional officer employed by a political subdivision is:

- (1) The first day of the month next following the month in which the peace officer or correctional officer attains the age of fifty-five years and has completed at least three consecutive years of employment as a peace officer or correctional officer ~~immediately preceding retirement~~; or
  - (2) When the peace officer or correctional officer has a combined total of years of service credit and years of age equal to eighty-five and has not received a retirement benefit under this chapter.
- d. Normal retirement date for a peace officer employed by the bureau of criminal investigation is:
- (1) The first day of the month next following the month in which the peace officer attains the age of fifty-five years and has completed at least three consecutive years of employment as a peace officer immediately preceding retirement; or
  - (2) When the peace officer has a combined total of years of service credit and years of age equal to eighty-five and has not received a retirement benefit under this chapter.
- e. Postponed retirement date is the first day of the month next following the month in which the member, on or after July 1, 1977, actually severs or has severed the member's employment after reaching the normal retirement date.
- f. Early retirement date, except for a national guard security officer or firefighter or a peace officer or correctional officer employed by the bureau of criminal investigation or by a political subdivision, is the first day of the month next following the month in which the member attains the age of fifty-five years and has completed three years of eligible employment. For a national guard security officer or firefighter, early retirement date is the first day of the month next following the month in which the national guard security officer or firefighter attains the age of fifty years and has completed at least three years of eligible employment. For a peace officer or correctional officer employed by the bureau of criminal investigation or by a political subdivision, early retirement date is the first day of the month next following the month in which the peace officer or correctional officer attains the age of fifty years and has completed at least three years of eligible employment.
- g. Disability retirement date is the first day of the month after a member becomes permanently and totally disabled, according to medical evidence called for under the rules of the board, and has completed at least one hundred eighty days of eligible employment. For supreme and district court judges, permanent and total disability is based solely on a judge's inability to perform judicial duties arising out of physical or mental impairment, as determined pursuant to rules adopted by the board or as provided by subdivision a of subsection 3 of section 27-23-03. A member is eligible to receive disability retirement benefits only if the member:
- (1) Became disabled during the period of eligible employment; and
  - (2) Applies for disability retirement benefits within twelve months of the date the member terminates employment.

A member is eligible to continue to receive disability benefits as long as the permanent and total disability continues and the member submits the necessary documentation and undergoes medical testing required by the board, or for as long as the member participates in a rehabilitation program required by the board, or both. If the board determines that a member no longer meets the eligibility definition, the board may discontinue the disability retirement benefit. The board may pay the cost of any medical testing or rehabilitation services it deems necessary and these payments are appropriated from the retirement fund for those purposes.

6. If before retiring a member dies after completing three years of eligible employment, except for supreme and district court judges, who must have completed five years of eligible employment, the board shall pay the member's account balance to the member's designated beneficiary as provided in this subsection. If the member has designated an alternate beneficiary with the surviving spouse's written consent, the board shall pay the member's account balance to the named beneficiary. If the member has named more than one primary beneficiary, the board shall pay the member's account balance to the named primary beneficiaries in the percentages designated by the member or, if the member has not designated a percentage for the beneficiaries, in equal percentages. If one or more of the primary beneficiaries has predeceased the member, the board shall pay the predeceased beneficiary's share to the remaining primary beneficiaries. If any beneficiary survives the member, yet dies before distribution of the beneficiary's share, the beneficiary must be treated as if the beneficiary predeceased the member. If there are no remaining primary beneficiaries, the board shall pay the member's account balance to the contingent beneficiaries in the same manner. If there are no remaining designated beneficiaries, the board shall pay the member's account balance to the member's estate. If the member has not designated an alternate beneficiary or the surviving spouse is the beneficiary, the surviving spouse of the member may select a form of payment as follows:
  - a. If the member was a supreme or district court judge, the surviving spouse may select one of the following optional forms of payment:
    - (1) A lump sum payment of the member's retirement account as of the date of death.
    - (2) Payments as calculated for the deceased member as if the member was of normal retirement age at the date of death, payable until the spouse dies.
  - b. The surviving spouse of all other members may select one of the following options:
    - (1) A lump sum payment of the member's retirement account as of the date of death.
    - (2) Payment of a monthly retirement benefit equal to fifty percent of the deceased member's accrued single life retirement benefits until the spouse dies.
    - (3) If the member dies on or after the member's normal retirement date, the payment of a monthly retirement benefit equal to an amount that



would have been paid to the surviving spouse if the member had retired on the day of the member's death and had selected a one hundred percent joint and survivor annuity, payable until the spouse dies. A surviving spouse who received a benefit under this subsection as of July 31, 1995, is entitled to the higher of that person's existing benefit or the equivalent of the accrued benefit available under the one hundred percent joint and survivor provision as if the deceased member were of normal retirement age, with the increase payable beginning August 1, 1995.

**SECTION 8. AMENDMENT.** Section 54-52-27 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-27. Purchase of sick leave credit.**

A member is entitled to credit in the retirement system for each month of unused sick leave, as certified by the member's employer, if the member or the member's employer pays an amount equal to the member's final average salary, times the number of months of sick leave converted, times the percent of employer and employee contributions to the retirement program of the member, plus the required contribution for the retiree health benefits program. Hours of sick leave equal to a fraction of a month are deemed to be a full month for purposes of conversion to service credit. A member may convert all of the member's certified sick leave or a part of the member's certified sick leave. ~~All conversion payments must be made within sixty days of termination of employment and before the member receives a retirement annuity unless the member has submitted an approved payment plan to the board.~~

**SECTION 9. AMENDMENT.** Section 54-52-28 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-28. Internal Revenue Code compliance.**

~~4.~~The board shall administer the plan in compliance with ~~section 415, section 401(a)(9), section 401(a)(17), and section 401(a)(31)~~the following sections of the Internal Revenue Code in effect on August 1, ~~2009~~2011, as it applies for governmental plans.

2-1. Section 415, including the defined benefit dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code.

- a. The defined benefit dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code, as approved by the legislative assembly, must be adjusted under section 415(d) of the Internal Revenue Code, effective January first of each year following a regular legislative session. The adjustment of the defined benefit dollar limitation under section 415(d) applies to participating members who have had a separation from employment, but that member's benefit payments may not reflect the adjusted limit prior to January first of the calendar year in which the adjustment applies.
3. b. If a participating member's benefit is increased by plan amendment after the commencement of benefit payments, the member's annual benefit may not exceed the defined benefit dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code, as adjusted under section 415(d) for the calendar year in which the increased benefit is payable.

4. c. If a participating member is, or ever has been, a participant in another defined benefit plan maintained by the employer, the sum of the participant's annual benefits from all the plans may not exceed the defined benefit dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code. If the participating member's employer-provided benefits under all such defined benefit plans would exceed the defined benefit dollar limitation, the benefit must be reduced to comply with section 415 of the Internal Revenue Code. The reduction must be made pro rata between the plans, in proportion to the participating member's service in each plan.
2. The minimum distribution rules under section 401(a)(9) of the Internal Revenue Code, including the incidental death benefit requirements under section 401(a)(9)(G), and the regulations issued under that provision to the extent applicable to governmental plans. Accordingly, benefits must be distributed or begin to be distributed no later than a member's required beginning date, and the required minimum distribution rules override any inconsistent provision of this chapter. A member's required beginning date is April first of the calendar year following the later of the calendar year in which the member attains age seventy and one-half or terminates employment.
3. The annual compensation limitation under section 401(a)(17) of the Internal Revenue Code, as adjusted for cost-of-living increases under section 401(a)(17)(B).
4. The rollover rules under section 401(a)(31) of the Internal Revenue Code. Accordingly, a distributee may elect to have an eligible rollover distribution, as defined in section 402(c)(4) 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.
5. If the plan of retirement benefits set forth in this chapter is terminated or discontinued, the rights of all affected participating members to accrued retirement benefits under this chapter as of the date of termination or discontinuance is nonforfeitable, to the extent then funded.

**SECTION 10. AMENDMENT.** Subsection 3 of section 54-52.1-03 of the North Dakota Century Code is amended and reenacted as follows:

3. A retiree who has accepted a periodic distribution from the defined contribution retirement plan pursuant to section 54-52.6-13 who the board determines is eligible for participation in the uniform group insurance program or has accepted a retirement allowance from the public employees retirement system, the highway patrolmen's retirement system, the teachers' insurance and annuity association of America - college retirement equities fund for service credit earned while employed by North Dakota institutions of higher education, the retirement system established by job service North Dakota under section 52-11-01, the judges' retirement system established under chapter 27-17, or the teachers' fund for retirement may elect to participate in the uniform group under this chapter without meeting minimum requirements at age sixty-five, when the member's spouse reaches age sixty-five, upon the receipt of a benefit, or when the spouse terminates employment. If a retiree or surviving spouse does not elect to participate at the times specified in this subsection, the retiree or surviving spouse must meet the minimum requirements established by the board. Subject to sections 54-52.1-03.2 and 54-52.1-03.3, each retiree or surviving spouse shall pay directly to the board

the premiums in effect for the coverage then being provided. A retiree or surviving spouse who has met the initial eligibility requirements of this subsection to begin participation in the uniform group insurance program remains eligible as long as the retiree maintains the retiree's participation in the program by paying the required premium pursuant to rules adopted by the board.

<sup>135</sup> **SECTION 11. AMENDMENT.** Subsection 3 of section 54-52.6-09 of the North Dakota Century Code is amended and reenacted as follows:

3. Each employer, at its option, may pay the employee contributions required by 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 ~~December 1, 1999, and shall report~~reporting its choice to the board in writing. ~~The option chosen may not be revoked for the remainder of the biennium. Thereafter, the option choice must be forwarded to the board, in writing, by June fifteenth of each odd-numbered year.~~

Approved April 25, 2011  
Filed April 25, 2011

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<sup>135</sup> Section 54-52.6-09 was also amended by section 10 of Senate Bill No. 2108, chapter 432.

## CHAPTER 432

### SENATE BILL NO. 2108

(Government and Veterans Affairs Committee)  
(At the request of the Public Employees Retirement System Board)

AN ACT to amend and reenact sections 39-03.1-09, 39-03.1-10, 54-52-02.9, 54-52-05, 54-52-06, 54-52-06.1, 54-52-06.3, and 54-52-06.4, subsection 6 of 54-52.6-02, and section 54-52.6-09 of the North Dakota Century Code, relating to increased employer and employee contributions under the highway patrolmen's retirement plan and public employees retirement system.

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

**SECTION 1. AMENDMENT.** Section 39-03.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**39-03.1-09. Payments by contributors - Employer payment of employee contribution.**

1. Every member, except as provided in section 39-03.1-07, shall contribute into the fund ten and thirty-hundredths percent of the member's monthly salary, which sum must be deducted from the member's salary and credited to the member's account in the fund. Member contributions increase by one percent of the member's monthly salary 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.
2. The state of North Dakota, at its option, may pay the member contributions required by subsection 1 for all compensation earned after June 30, 1983, and may pay the member contributions required to purchase service credit on a pretax basis pursuant to subsection 8 of section 39-03.1-08.2. The amount paid must be paid by the state in lieu of contributions by the member. A member may not receive the contributed amounts directly once the employer has elected to pay the member contributions. If the state decides not to pay the contributions, the amount that would have been paid will continue to be deducted from compensation. If contributions are paid by the state, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. If contributions are paid by the state, they must not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue Code until they are distributed or made available. The state shall pay these member contributions from the same source of funds used in paying compensation to the members. The state shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases or by a combination of a reduction in gross salary and offset against future salary increases. If member contributions are paid by the state, they must be treated for the purposes of this chapter in the same manner and to the same extent as member contributions made prior to the date the contributions were assumed by the state. The option given employers by this subsection must be exercised in accordance with rules adopted by the board.

3. For compensation earned after August 1, 2009, all employee contributions required under subsection 1, and not otherwise paid under subsection 2, must be paid by the state in lieu of contributions by the member. All contributions paid by the state under this subsection must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. Contributions paid by the state under this subsection may not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue Code until the contributions are distributed or made available. Contributions paid by the state in accordance with this subsection must be treated for the purposes of this chapter in the same manner and to the same extent as member contributions made before the date the contributions were assumed by the state. The state shall pay these member contributions from the same source of funds used in paying compensation to the members. The state shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee. The state shall continue making payments under this section unless otherwise specifically provided for under the agency's biennial appropriation or by law.

**SECTION 2. AMENDMENT.** Section 39-03.1-10 of the North Dakota Century Code is amended and reenacted as follows:

**39-03.1-10. Contributions by the state.**

The state shall contribute to the fund a sum equal to sixteen and seventy-hundredths percent of the monthly salary or wage of a participating member. State 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. If the member's contribution is paid by the state under subsection 2 of section 39-03.1-09, the state shall contribute, in addition, an amount equal to the required member's contribution. The state shall pay the associated employer contribution for those members who elect to exercise their rights under subsection 3 of section 39-03.1-10.1.

**SECTION 3. AMENDMENT.** Section 54-52-02.9 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-02.9. Participation by temporary employees.**

A temporary employee may elect, within one hundred eighty days of beginning employment, to participate in the public employees retirement system and receive credit for service after enrollment. The temporary employee shall pay monthly to the fund an amount equal to eight and twelve-hundredths percent times the temporary employee's present monthly salary. The 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. The temporary employee shall also 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. 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 4. AMENDMENT.** Section 54-52-05 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-05. Membership and assessments - Employer payment of employee contributions.**

1. Every eligible governmental unit employee concurring in the plan must so state in writing and all future eligible employees are participating members. An employee who was not enrolled in the retirement system when eligible to participate must be enrolled immediately upon notice of the employee's eligibility, unless the employee waives in writing the employee's right to participate for the previous time of eligibility, to avoid contributing to the fund for past service. An employee who is eligible for normal retirement who accepts a retirement benefit under this chapter and who subsequently becomes employed with a participating employer other than the employer with which the employee was employed at the time the employee retired under this chapter may, before reenrolling in the retirement plan, elect to permanently waive future participation in the retirement plan and the retiree health program and maintain that employee's retirement status. An employee making this election is not required to make any future employee contributions to the public employees retirement system nor is the employee's employer required to make any further contributions on behalf of that employee.
2. Each member must be assessed and required to pay monthly four percent of the monthly salary or wage paid to the member, and such assessment must be deducted and retained out of such salary in equal monthly installments commencing with the first month of employment. Member contributions increase by one percent of the monthly salary or wage paid to the 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.
3. Each employer, at its option, may pay all or a portion of the employee contributions required by subsection 2 and sections 54-52-06.1, 54-52-06.2, 54-52-06.3, and 54-52-06.4 or the employee contributions required to purchase service credit on a pretax basis pursuant to subsection 5 of section 54-52-17.4. Employees may not receive the contributed amounts directly once the employer has elected to pay the employee contributions. The amount paid must be paid by the employer in lieu of contributions by the employee. If the state determines not to pay the contributions, the amount that would have been paid must continue to be deducted from the employee's compensation. If contributions are paid by the employer, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. If contributions are paid by the employer, they may not be included as gross income of the employee in determining tax treatment under this code and the Internal Revenue Code until they are distributed or made available. The employer shall pay these employee contributions from the same source of funds used in paying compensation to the employee or from the levy authorized by subsection 5 of section 57-15-28.1. The employer shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases or by a contribution of a reduction in gross salary and offset against future salary increases. If employee contributions are paid by the employer, they must be treated for the purposes of this chapter in the same manner and to the same extent as employee contributions made prior to the date on which employee

contributions were assumed by the employer. An employer exercising its option under this subsection shall report its choice to the board in writing.

4. For compensation earned after August 1, 2009, all employee contributions required under section 54-52-06.1 and the job service North Dakota retirement plan, and not otherwise paid under subsection 3, must be paid by the employer in lieu of contributions by the member. All contributions paid by the employer under this subsection must be treated as employer contributions in determining tax treatment under this code and the Internal Revenue Code. Contributions paid by the employer under this subsection may not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue Code until the contributions are distributed or made available. Contributions paid by the employer in accordance with this subsection must be treated for the purposes of this chapter in the same manner and to the same extent as member contributions made before the date the contributions were assumed by the employer. The employer shall pay these member 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. The employer shall continue making payments under this section unless otherwise specifically provided for under the agency's biennial appropriation or by amendment to law.

**SECTION 5. 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.**

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. 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 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 became due, penalty and interest to be paid on delinquent contributions may be waived. 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. 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 6. AMENDMENT.** Section 54-52-06.1 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-06.1. Contribution by supreme and district court judges - Employer contribution.**

Each judge of the supreme or district court who is a member of the public employees retirement system must be assessed and required to pay monthly five percent of the judge's monthly salary. Member contributions increase by one percent of the judge's monthly salary 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. The assessment must be deducted and retained out of the judge's salary in equal monthly installments. The state shall contribute an amount equal to fourteen and fifty-two one-hundredths percent of the monthly salary of a supreme or district court judge who is a participating member of the system, which matching contribution must be paid from its funds appropriated for salary, or from any other funds available for such purposes. State contributions increase by one percent of the monthly salary of a supreme or district court judge who is a participating member of the system 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. If the judge's contribution is paid by the state under subsection 3 of section 54-52-05, the state shall contribute, in addition, an amount equal to the required judge's contribution.

**SECTION 7. AMENDMENT.** Section 54-52-06.3 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-06.3. Contribution by peace officers and correctional officers employed by political subdivisions - Employer contribution.**

Each peace officer or correctional officer employed by a political subdivision that enters into an agreement with the retirement board on behalf of its peace officers and correctional officers separately from its other employees and who is a member of the public employees retirement system is assessed and shall pay monthly four percent of the employee's monthly salary. Peace officer or correctional officer contributions increase by one-half of one percent of the member's monthly salary beginning with the monthly reporting period of January 2012, and with an additional increase of one-half of one percent, beginning with the reporting period of January 2013. The assessment must be deducted and retained out of the employee's salary in equal monthly installments. The peace officer's or correctional officer's employer shall contribute an amount determined by the board to be actuarially required to support the level of benefits specified in section 54-52-17. If the peace officer's or correctional officer's assessment is paid by the employer under subsection 3 of section 54-52-05, the employer shall contribute, in addition, an amount equal to the required peace officer's or correctional officer's assessment.

**SECTION 8. AMENDMENT.** Section 54-52-06.4 of the North Dakota Century Code is amended and reenacted as follows:



#### **54-52-06.4. Contribution by peace officers employed by the bureau of criminal investigation - Employer contribution.**

Each peace officer employed by the bureau of criminal investigation who is a member of the public employees retirement system is assessed and shall pay monthly four percent of the employee's monthly salary. Peace officer contributions increase by one percent of the member's monthly salary 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. The assessment must be deducted and retained out of the employee's salary in equal monthly installments. The peace officer's employer shall contribute an amount determined by the board to be actuarially required to support the level of benefits specified in section 54-52-17. The employer's contribution must be paid from funds appropriated for salary or from any other funds available for such purposes. If the peace officer's assessment is paid by the employer under subsection 3 of section 54-52-05, the employer shall contribute, in addition, an amount equal to the required peace officer's assessment.

**SECTION 9. AMENDMENT.** Subsection 6 of section 54-52.6-02 of the North Dakota Century Code is amended and reenacted as follows:

6. A participating member who becomes a temporary employee may still participate in the defined contribution retirement plan upon filing an election with the board within one hundred eighty days of transferring to temporary employee status. The participating member may not become a member of the defined benefit plan as a temporary employee. The temporary employee electing to participate in the defined contribution retirement plan 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 increase of two percent, beginning with the reporting period of January 2013. The temporary employee shall also 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. An employer may not pay the temporary employee's contributions. A temporary employee may continue to participate as a temporary employee until termination of employment or reclassification of the temporary employee as a permanent employee.

<sup>136</sup> **SECTION 10. 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.

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<sup>136</sup> Section 54-52.6-09 was also amended by section 11 of Senate Bill No. 2109, chapter 431.

and with an additional increase of one percent, beginning with the reporting period of January 2013.

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 reporting period of January 2013. 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. The employer shall pay monthly such contribution into the participating member's account from its funds appropriated for payroll and salary or any other funds available for such purposes. If the employer fails to pay the contributions monthly, it 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.
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 December 1, 1999, and shall report its choice to the board in writing. The option chosen may not be revoked for the remainder of the biennium. Thereafter, the option choice must be forwarded to the board, in writing, by June fifteenth of each odd-numbered year.

Approved April 26, 2011  
Filed April 26, 2011

## CHAPTER 433

### SENATE BILL NO. 2110

(Industry, Business and Labor Committee)  
(At the request of the Public Employees Retirement System Board)

AN ACT to amend and reenact sections 54-52.1-02, 54-52.1-04, 54-52.1-04.2, and 54-52.1-04.3 of the North Dakota Century Code, relating to subgroups, receiving bids for prescription drug coverage, self-insurance for prescription drug coverage, and contingency reserve fund requirements under the uniform group insurance program.

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

**SECTION 1. AMENDMENT.** Section 54-52.1-02 of the North Dakota Century Code is amended and reenacted as follows:

#### **54-52.1-02. Uniform group insurance program created - Formation into subgroups.**

In order to promote the economy and efficiency of employment in the state's service, reduce personnel turnover, and offer an incentive to high-grade ~~men and women~~ individuals to enter and remain in the service of state employment, there is ~~hereby~~ created a uniform group insurance program. The uniform group must be composed of eligible and retired employees and be formed to provide hospital benefits coverage, medical benefits coverage, and life insurance benefits coverage in the manner set forth in this chapter. The uniform group may be divided into the following subgroups at the discretion of the board:

1. Medical and hospital benefits coverage group consisting of active eligible employees and retired employees not eligible for medicare. In determining premiums for coverage under this subsection for retired employees not eligible for medicare, the rate for a non-medicare retiree single plan is one hundred fifty percent of the active member single plan rate, the rate for a non-medicare retiree family plan of two people is twice the non-medicare retiree single plan rate, and the rate for a non-medicare retiree family plan of three or more persons is two and one-half times the non-medicare retiree single plan rate.
2. In addition to the coverage provided in subsection 1, another coverage option may be provided for retired employees not eligible for medicare, provided the option does not increase the implicit subsidy as determined by the governmental accounting standards board's other postemployment benefit reporting procedure. In offering this additional option, the board may have an open enrollment but thereafter enrollment for this option must be as specified in section 54-52.1-03.
3. Retired medicare-eligible employee group medical and hospital benefits coverage.
- ~~3.4.~~ Active eligible employee life insurance benefits coverage.
- ~~4.5.~~ Retired employee life insurance benefits coverage.

- ~~5-6.~~ Terminated employee continuation group medical and hospital benefits coverage.
- ~~6-7.~~ Terminated employee conversion group medical and hospital benefits coverage.
- ~~7-8.~~ Dental benefits coverage.
- ~~8-9.~~ Vision benefits coverage.
- ~~9-10.~~ Long-term care benefits coverage.
- ~~40-11.~~ Employee assistance benefits coverage.
- ~~44-12.~~ ~~Retired medicare eligible employee group prescription~~ Prescription drug coverage.

**SECTION 2. AMENDMENT.** Section 54-52.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.1-04. Board to contract for insurance.**

The board shall receive bids for the providing of hospital benefits coverage, medical benefits coverage, life insurance benefits coverage for a specified term, and employee assistance program services; may receive bids separately for ~~retired medicare eligible employee group~~ prescription drug coverage; and shall accept ~~the bid~~ one or more bids of and contract with the ~~carrier~~ carriers that in the judgment of the board best serves the interests of the state and its eligible employees. Solicitations must be made not later than ninety days before the expiration of an existing uniform group insurance contract. Bids must be solicited by advertisement in a manner selected by the board that will provide reasonable notice to prospective bidders. In preparing bid proposals and evaluating bids, the board may utilize the services of consultants on a contract basis in order that the bids received may be uniformly compared and properly evaluated. In determining which bid, if any, will best serve the interests of eligible employees and the state, the board shall give adequate consideration to the following factors:

1. The economy to be effected.
2. The ease of administration.
3. The adequacy of the coverages.
4. The financial position of the carrier, with special emphasis as to its solvency.
5. The reputation of the carrier and any other information that is available tending to show past experience with the carrier in matters of claim settlement, underwriting, and services.

The board may reject any or all bids and, in the event it does so, shall again solicit bids as provided in this section. The board may establish a plan of self-insurance for providing health insurance benefits coverage only under an administrative services only (ASO) contract or a third-party administrator (TPA) contract.

**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 ~~health~~:
  - 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 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 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. In addition, 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. 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 fund - Continuing appropriation.**

The board shall establish under a self-insurance 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 ~~equal to between one and one-half months and~~ three and one-half 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 ~~the determination~~ these determinations. Upon the initial changeover from a contract for insurance pursuant to section 54-52.1-04 to a self-insurance plan pursuant to section 54-52.1-04.2, the board must have a plan in place which is reasonably calculated to meet the funding requirements of this chapter within sixty months. All moneys in the contingency reserve fund, not otherwise appropriated, are appropriated for the payment of claims and other costs of the uniform group insurance program during periods of adverse claims or cost fluctuations.

Approved April 20, 2011  
Filed April 20, 2011

## CHAPTER 434

### HOUSE BILL NO. 1364

(Representative Carlson)

AN ACT to create and enact a new section to chapter 54-52.1 of the North Dakota Century Code, relating to the creation of a high-deductible health plan with a health savings account; and to provide an appropriation.

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

**SECTION 1.** A new section to chapter 54-52.1 of the North Dakota Century Code is created and enacted as follows:

##### **High-deductible health plan alternative with health savings account option.**

The board shall develop and implement a high-deductible health plan with a health savings account as an alternative to the plan under section 54-52.1-06. The high-deductible health plan alternative must be made available to state employees by January 1, 2012, and may be offered, at the discretion of the board, to political subdivisions after June 30, 2013. Health savings account fees must be paid by the employer. The difference between the cost of the single and family premium for eligible state employees under section 54-52.1-06 and the premium for those employees electing to participate under the high-deductible health plan under this section must be deposited in a health savings account for the benefit of each participating employee. For political subdivision employees, the board shall deposit into a health savings account for the benefit of the participating political subdivision employee, an amount equal to the difference between the primary plan premium as established by the board and the premium for the high-deductible health plan under this section. Each new employee of a participating employer under this section must be provided the opportunity to elect the high-deductible health plan. At least once each biennium, the board shall have an open enrollment period allowing existing employees of a participating employer under this section to change their coverage.

**SECTION 2. APPROPRIATION.** There is appropriated out of any funds received under chapter 54-52.1, not otherwise appropriated, the sum of \$91,000, or so much of the sum as may be necessary, to the public employees retirement system board for the purpose of implementing section 1 of this Act, for the biennium beginning July 1, 2011, and ending June 30, 2013.

Approved April 19, 2011  
Filed April 20, 2011

## CHAPTER 435

### SENATE BILL NO. 2213

(Senators Nething, Oehlke, Schneider)  
(Representatives N. Johnson, Karls, Kretschmar)

AN ACT to amend and reenact section 54-52.4-03 of the North Dakota Century Code, relating to family medical leave for state employees; and to declare an emergency.

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

**SECTION 1. 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 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. An employee may take ~~not more than fortyeight~~ hours of leave under this section in any twelve-month period and, upon approval of the employee's supervisor and pursuant to rules adopted by the director of the office of management and budget, the employee may take, in any twelve-month period, up to an additional ten percent of the employee's accrued sick leave to care for the employee's child, spouse, or parent if the child, spouse, or parent has a serious health condition. 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.

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

Approved April 26, 2011  
Filed April 26, 2011

## CHAPTER 436

### HOUSE BILL NO. 1200

(Representatives Brandenburg, Boe)  
(Senators Klein, Wardner)

AN ACT to amend and reenact section 54-53-02 of the North Dakota Century Code, relating to members of the advisory transportation council to the upper great plains transportation institute.

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

**SECTION 1. AMENDMENT.** Section 54-53-02 of the North Dakota Century Code is amended and reenacted as follows:

#### **54-53-02. Advisory transportation council - Composition.**

1. There is established a transportation council that shall serve in an advisory capacity to the upper great plains transportation institute. The director of the institute shall serve as the executive secretary of the council. The council shall elect its own chairman. The council membership consists of one representative from and appointed by the following:
  1. a. The North Dakota chamber of commerce.
  2. b. The North Dakota public service commission.
  3. ~~The North Dakota farm bureau.~~
  4. c. The North Dakota farmers union.
  5. d. The North Dakota grain growers association.
  6. e. The North Dakota wheat commission.
  7. f. The North Dakota department of commerce.
  8. g. The North Dakota grain dealers association.
  9. h. The North Dakota motor carriers association.
  10. i. The North Dakota aeronautics commission.
  11. j. The North Dakota department of transportation.
  12. k. The North Dakota department of agriculture.
  13. l. The associated general contractors of North Dakota.
  14. m. The North Dakota railway industry, appointed by the council.



- ~~15.~~ n. The North Dakota primary sector of manufacturing, appointed by the council.
- ~~16.~~ o. The North Dakota association of counties.
- ~~17.~~ p. The North Dakota league of cities.
- ~~18.~~ q. The lignite energy council.
- ~~19.~~ r. A North Dakota member of the dakota transit association.
- s. The North Dakota corn council.
2. Members of the council shall serve without pay, but they may receive reimbursement for actual and necessary expenses incurred in the performance of their duties, if authorized by the director.
3. The council shall consult with the institute in matters of policy affecting the administration of this chapter and in the development of transportation in the state of North Dakota. The council shall meet at the call of the chairman or director or upon the written request of three or more members of the council.

Approved April 11, 2011  
Filed April 11, 2011

## CHAPTER 437

### HOUSE BILL NO. 1240

(Representative Kretschmar)

AN ACT to amend and reenact section 54-55-01 of the North Dakota Century Code, relating to the qualifications of members of the commission on uniform state laws.

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

**SECTION 1. AMENDMENT.** Section 54-55-01 of the North Dakota Century Code is amended and reenacted as follows:

#### **54-55-01. Commission on uniform state laws - Membership.**

The commission on uniform state laws consists of an individual engaged in the practice of law in this state, the dean or a full-time member of the faculty of the law school of the university of North Dakota, a law-trained judge of a court of record in this state, a member of the house of representatives and a member of the senate of the legislative assembly, and a member of the legislative council. The commission also consists of any residents of this state who, because of long service in the cause of uniformity of state legislation, have been elected life members of the national conference of commissioners on uniform state laws, and may also consist of any residents of this state who have been previously appointed to at least five years of service on the commission. ~~Commissioners, except~~ Except for the members of the legislative assembly, the member of the legislative council, and life members, commissioners first appointed after July 21, 2011, must be residents of the state. must be appointed by the governor for terms of four years each, commencing on the first day of September following each presidential election, and shall serve until their respective successors are appointed. The members of the legislative assembly on the commission must be appointed by the legislative management for a term not to exceed four years as prescribed by the legislative management, and the member of the legislative council must be appointed by the chairman of the legislative management.

Approved March 29, 2011

Filed March 29, 2011

## CHAPTER 438

### SENATE BILL NO. 2037

(Legislative Management)  
(Information Technology Committee)

AN ACT to create and enact four new sections to chapter 54-59 of the North Dakota Century Code, relating to the confidentiality of health information under the health information exchange and participation in the health information exchange; to amend and reenact sections 23-06.5-19, 54-59-25, and 54-59-26 of the North Dakota Century Code, relating to health information technology; to provide a penalty; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 23-06.5-19 of the North Dakota Century Code is amended and reenacted as follows:

#### **23-06.5-19. Health care record registry - Fees.**

1. As used in this section:
  - a. "Health care record" means a health care directive or a revocation of a health care directive executed in accordance with this chapter.
  - b. "Registration form" means a form prescribed by the ~~secretary of state~~information technology department to facilitate the filing of a health care record.
2.
  - a. The ~~secretary of state~~information technology department may establish and maintain a health care record registry, through which a health care record may be filed. The registry must be accessible through a website maintained by the ~~secretary of state~~information technology department.
  - b. An individual who is the subject of a health care record, or that individual's agent, may submit to the ~~secretary of state~~information technology department for registration, using a registration form, a health care record executed in accordance with this chapter.
3. Failure to register a health care record with the ~~secretary of state~~information technology department under this section does not affect the validity of the health care record. Failure to notify the ~~secretary of state~~information technology department of the revocation of a health care record filed under this section does not affect the validity of a revocation that otherwise meets the statutory requirements for revocation.
4.
  - a. Upon receipt of a health care record and completed registration form, the ~~secretary of state~~information technology department shall create a digital reproduction of the health care record, enter the reproduced health care record into the health care record registry database, and assign each registration a unique file number. The ~~secretary of state~~information technology department is not required to review a health care record to

- ensure the health care record complies with any particular statutory requirements that may apply to the health care record.
- b. ~~The secretary of state~~information technology department shall delete a health care record filed with the registry under this section upon receipt of a revocation of the health care record along with that document's file number.
  - c. The entry of a health care record under this section does not affect or otherwise create a presumption regarding the validity of the health care record or the accuracy of the information contained in the health care record.
5. a. The registry must be accessible by entering the file number and password on the internet website. Registration forms, file numbers, and other information maintained by the ~~secretary of state~~information technology department under this section are confidential and the state may not disclose this information to any person other than the subject of the document, or the subject's agent. The ~~secretary of state~~information technology department may not use information contained in the registry except as provided under this chapter.
    - b. At the request of the subject of the health care record, or the subject's agent, the ~~secretary of state~~information technology department may transmit the information received regarding the health care record to the registry system of another jurisdiction as identified by the requester.
    - c. This section does not require a health care provider to seek to access registry information about whether a patient has executed a health care record that may be registered under this section. A health care provider who makes good-faith health care decisions in reliance on the provisions of an apparently genuine health care record received from the registry is immune from criminal and civil liability to the same extent and under the same conditions as prescribed in section 23-06.5-12. This section does not affect the duty of a health care provider to provide information to a patient regarding health care directives as may be required under federal law.
  6. ~~The secretary of state may accept a gift, grant, donation, bequest, or other form of voluntary contribution to establish, support, promote, and maintain the registry. Any funds contributed under this subsection and any fees collected under this section must be deposited in the secretary of state's general services operating fund. The secretary of state shall~~information technology department may charge and collect a reasonable fee for filing a health care record and a revocation of a health care record.

**SECTION 2. AMENDMENT.** Section 54-59-25 of the North Dakota Century Code is amended and reenacted as follows:

**54-59-25. Health information technology advisory committee - Duties.**

1. The health information technology advisory committee consists of the state chief information officer or the chief information officer's designee, the state health officer or the state health officer's designee, the governor or the governor's designee, the executive director of the department of human services or the executive director's designee, the chairman of the house

human services committee and the chairman of the senate human services committee or if either or both of them are unwilling or unable to serve then the chairman of the legislative management shall appoint a replacement who is a member of the same legislative chamber as the individual being replaced, and individuals appointed by the governor and the state health officer to represent a broad range of public and private health information technology stakeholders.

2. The health information technology advisory committee shall collaborate with and make recommendations to the health information technology office, as provided under sections 6-09-42, 6-09-43, 54-59-26, and 54-59-27.
3. As requested by the health information technology advisory committee, the department shall provide or arrange for administrative services to assist the health information technology advisory committee.
4. The health information technology advisory committee may employ an executive director who serves at the pleasure of and under the direct supervision of the health information technology advisory committee. The executive director may employ personnel as necessary for the administration of this section.
5. The health information technology advisory committee may accept private contributions, gifts, and grants from any source to carry out the purposes of the committee and the health information technology office.

**SECTION 3. AMENDMENT.** Section 54-59-26 of the North Dakota Century Code is amended and reenacted as follows:

**54-59-26. Health information technology office - Duties - Loan and grant programs.**

1. The health information technology office is created in the department. The health information technology advisory committee shall make recommendations to the health information technology office for implementing a statewide interoperable health information infrastructure that is consistent with emerging national standards; promote the adoption and use of electronic health records and other health information technologies; and promote interoperability of health information systems for the purpose of improving health care quality, patient safety, and the overall efficiency of health care and public health services.
2. The health information technology office director, in collaboration with the health information technology advisory committee, shall:
  - a. Apply for federal funds that may be available to assist the state and health care providers in implementing and improving health information technology.
  - b. Implement and administer a health information exchange that utilizes information infrastructure and systems in a secure and cost-effective manner to facilitate the collection, storage, and transmission of health records.

- c. Adopt rules under chapter 28-32 for the use of health information, use of the health information exchange, and participation in the health information exchange.
  - d. Adopt rules under chapter 28-32 for accessing the health information exchange to ensure appropriate and required privacy and security protections and relating to the authority of the director to suspend, eliminate, or terminate the right to participate in the health information exchange.
  - e. Establish a health information technology loan program to provide loans to health care providers for the purpose of purchasing and upgrading certified electronic health record technology, training personnel in the use of such technology, and improving the secure electronic exchange of health information, and for any other purpose under section 6-09-42.
  - e-f. Establish a health information technology planning loan program to provide low-interest loans to health care entities to assist those entities in improving their health information technology infrastructure under section 6-09-43.
  - e-g. Facilitate and expand electronic health information exchange in the state, directly or by awarding grants.
  - e-h. Establish an application process and eligibility criteria for and accept and process applications for loans and grants under subdivisions e, e-f, and e-g. The eligibility criteria must be consistent with federal requirements associated with federal funds received under subdivision a. The eligibility criteria for loans under subdivision e-f must include a requirement that the recipient's approved health information technology be strategically aligned with the state's health information technology plan and the associated federal standards and that the recipient has passed an onsite electronic medical record readiness assessment conducted by an assessment team determined by the health information technology advisory committee and the health information technology office director.
  - i. Determine fees and charges for access and participation in the health information exchange. Any moneys collected under this subdivision must be deposited in the electronic health information exchange fund.
  - j. Consult and coordinate with the state department of health and the department of human services to facilitate the collection of health information from health care providers and state agencies for public health purposes, including identifiable health information that may be used by state agencies, departments, or institutions to comply with applicable state or federal laws.
3. If the health information technology advisory committee determines that establishing a health information exchange with another state or states will assist in providing health information exchange services in a cost-effective manner, the health information technology office director, in collaboration with the health information technology advisory committee, may join with another state or states to establish, implement, and administer a health information exchange consistent with other provisions of this chapter.

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

**Participation in the health information exchange by executive branch state agencies and institutions of higher education.**

1. Before January 1, 2015, each executive branch state agency and each institution of higher education that implements, acquires, or upgrades health information technology systems shall use health information technology systems and products that meet minimum standards adopted by the health information technology office for accessing the health information exchange. A state agency or institution of higher education that participates in or has health information that supports or develops the health information exchange shall provide access to patient-specific data to complete the patient record within the health information exchange. Notwithstanding any other provision of law, each participating agency and institution shall provide patient-specific data to the health information exchange.
2. Participation in the health information exchange by a state agency or institution has no effect on the content, use, or disclosure of health information of patient participants which is held in locations other than the exchange. This section does not limit or change the obligation of an agency or institution to exchange health information in accordance with other applicable federal and state laws or rules.

**SECTION 5.** A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

**Health information exchange - Confidential records.**

Any individually identifiable health information, as defined under the federal Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104-191], submitted to, stored in, or transmitted by the health information exchange under chapter 54-59 and any such data or record in the possession of the health information technology office is confidential. Any other information relating to patients, individuals, or individually identifiable demographic information contained in a master client index submitted to, stored in or transmitted by the health information exchange or in the possession of the health information technology office is an exempt record.

**SECTION 6.** A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

**Immunity for reliance on data from the health information exchange.**

A health care provider that relies in good faith upon any information provided through the health information exchange in the treatment of a patient is immune from criminal or civil liability arising from any damages caused by that good-faith reliance. The immunity granted under this section does not apply to acts or omissions constituting gross negligence or reckless, wanton, or intentional misconduct.

**SECTION 7.** A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

**Certified electronic health records systems.**

An executive branch state agency, an institution of higher education, and any health care provider or other person participating in the health information exchange may use only an electronic health record system for use in the exchange which is certified under rules adopted by the office of the national coordinator for health information technology.

**SECTION 8. EFFECTIVE DATE.** Section 7 of this Act becomes effective on January 1, 2015.

Approved April 25, 2011  
Filed April 25, 2011



## CHAPTER 439

### HOUSE BILL NO. 1122

(Industry, Business and Labor Committee)  
(At the request of the Department of Commerce)

AN ACT to amend and reenact sections 54-34.4-03, 54-44.5-04, 54-60-02, 54-60-04, 54-60-16, and 54-60-25 of the North Dakota Century Code, relating to the state tourism policy, division of community services, department of commerce, North Dakota economic development foundation, North Dakota international business and trade office, and North Dakota rural development council; to repeal sections 4-14.1-01.1 and 54-34.3-12 of the North Dakota Century Code, relating to the definition of eligible facility and the value-added agriculture promotion board; to provide an effective date; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 54-34.4-03 of the North Dakota Century Code is amended and reenacted as follows:

**54-34.4-03. State tourism policy.**

1. The legislative assembly declares that:

- a. This state is endowed with scenic beauty, historical sites, cultural resources, local festivals, attractions, recreational facilities, and a population whose ethnic diversity and traditions are attractive to visitors;
- ~~b. These human and physical resources should be preserved and nurtured, not only because they are appreciated by other Americans and by visitors from other lands, but because they are valued by the state's residents;~~
- ~~e.~~ Tourism contributes to economic well-being by creating job opportunities, generating revenues for local businesses, and creating new wealth in the economy;
- ~~d.~~ ~~Tourism is an educational and informational medium for personal growth which informs residents about their state's geography and history, their political institutions, their cultural resources, their environment, and about each other;~~
- ~~e-c.~~ Tourism instills state pride and a sense of common interest among the state's residents;
- ~~f-d.~~ Tourism enhances the quality of life and well-being of the state's residents by affording opportunities for recreation, new experiences, and relief from job stress;
- ~~g-e.~~ Tourism advertising and marketing improves the image of North Dakota and helps educate and create awareness among residents and visitors alike;

- ~~h.f.~~ Tourism promotes international understanding and good will, and contributes to intercultural appreciation;
  - ~~i.~~ Tourism engenders appreciation of the state's cultural, architectural, technological, agricultural, and industrial achievements and is helpful in attracting new residents;
  - ~~j.~~ The development and promotion of tourism to and within the state is in the interest of the people of this state;
  - ~~k.~~ Tourism should develop in an orderly manner in order to provide the maximum benefit to the state and its residents;
  - ~~l.g.~~ The development of a strong and competitive state visitor industry depends upon the availability of trained personnel, necessary infrastructure, and a receptive climate for tourism investment; and
  - ~~m.h.~~ A comprehensive tourism policy is essential if tourism in the state is to grow in an orderly manner.
2. The legislative assembly declares it is the policy of this state to:
- a. ~~Encourage~~Promote and encourage the orderly growth and development of tourism to, and within, the state;
  - b. ~~Promote the availability of public tourism training to increase the skills and productivity of the tourism labor force and to broaden access to employment opportunities and the visitor industry;~~
  - e. ~~Encourage a healthy competitiveness in the visitor industry;~~
  - ~~d.~~ Promote the availability of reliable public highways and transport services between the state's principal tourism destinations and the main tourism generating markets;
  - e. ~~Expand off-season tourism to the state and thereby increase the productivity of the accommodation sector and reduce seasonal layoffs within the visitor and visitor-related industries;~~
  - ~~f.c.~~ Promote a sense of history in the state's young people by encouraging family visits to state historic sites, and promoting the preservation and restoration of historic sites, trails, buildings, and districts;
  - ~~g.d.~~ Promote the mental, emotional, and physical well-being of the American people by encouraging outdoor recreational activities within the state;
  - ~~h.~~ Encourage the talents and strengthen the economic independence of the state's residents by encouraging the preservation of traditional craft skills, the production of handicrafts and native and folk art by private artisans and crafts people, and the holding of craft demonstrations;
  - i. Encourage an optimum of satisfaction and high quality service to visitors;
  - ~~j.~~ Promote a tourist environment that respects our visitors' rights as consumers;

- ~~k. Afford visitors and residents the best possible conditions of public sanitation;~~
- ~~l.e. Facilitate tourism to, and within, the state by developing an essential tourism infrastructure, providing investment incentives to tourism businesses, and encouraging city and county officials to plan for tourism needs and capitalize on local tourism resources;~~
- ~~m. Promote a better understanding among the state's residents of the social and economic importance of tourism through appropriate formal and informal learning experiences about tourism, and foster among all citizens the capacity for courtesy to visitors;~~
- ~~n.f. Encourage the holding of conventions, trade shows, and expositions throughout the state;~~
- ~~o. Promote tourism in a manner that fosters visitors' understanding and respect for native and religious beliefs, customs, and ethnic traditions of the state's residents;~~
- ~~p. Monitor tourist impact on the basic human rights of the state's residents and ensure equal access by visitors and residents to public recreational resources;~~
- ~~q.g. Take measures to protect wildlife and natural resources in the preservation of geological, archaeological, and cultural treasures in tourist areas;~~
- ~~r.h. Encourage, assist, and coordinate when possible the tourism activities of local and area promotional organizations and tribes; and~~
- ~~i. Provide hospitality training opportunities for frontline employees and provide resources to law enforcement personnel, border security, transportation security administration officials, and all state employees to assist, whenever possible, the tourism industry in helping visitors enjoy their North Dakota experience; and~~
- ~~s.j. Ensure that the tourism interest of the state is considered fully by state agencies and the legislative assembly in their deliberations; and harmonize to the maximum extent possible, all state activities in support of tourism with the needs of the general public, the political subdivisions of the state, and the visitor industry.~~

**SECTION 2. AMENDMENT.** Section 54-44.5-04 of the North Dakota Century Code is amended and reenacted as follows:

**54-44.5-04. Division of community services - Powers and duties.**

The division of community services shall:

1. Provide relevant information on pertinent topics and issues which relate to public policy development, interpretation, modification, and implementation.
2. ~~Research, analyze, and recommend public policy for the office of management and budget and the executive office.~~

- ~~3.~~ ~~Coordinate public policy implementation within the state. Powers conferred upon departments, agencies, or instrumentalities of the state, counties, townships, or cities by any existing state or local law may not be derogated by this duty.~~
4. Develop state energy conservation policy and manage federal energy conservation program activities between all levels of the public and private sectors regarding the prudent and efficient use of energy resources.
- ~~5-3.~~ Develop, implement, and administer federal categorical and block grant programs assigned to the division.
- ~~6-4.~~ Advise, coordinate, and assist cities, political subdivisions, and the state in all phases of state and local planning for the physical development of the state.
- ~~7-5.~~ Render financial assistance to any government planning agency within federal law or regulation.
- ~~8-6.~~ Advise, consult, coordinate, assist, and contract with or on behalf of the various planning agencies in developing and harmonizing planning activities of the state.
- ~~9-7.~~ Implement a state facility energy improvement program.

**SECTION 3. AMENDMENT.** Section 54-60-02 of the North Dakota Century Code is amended and reenacted as follows:

**54-60-02. Department of commerce - Divisions.**

The North Dakota department of commerce is created. ~~All records, materials, supplies, and equipment used by the division of community services, department of economic development and finance, and the department of tourism are transferred to the department.~~

1. The department must consist of:
  - a. A division of community services;
  - b. A division of economic development and finance;
  - c. A division of tourism;
  - d. A division of workforce development; and
  - e. Any division or office the commissioner determines necessary to carry out this chapter.
2. The commissioner shall appoint the director of each division of the department. Each director appointed by the commissioner serves at the pleasure of the commissioner and is entitled to receive a salary set by the commissioner within the limits of legislative appropriations.

**SECTION 4. AMENDMENT.** Section 54-60-04 of the North Dakota Century Code is amended and reenacted as follows:

**54-60-04. North Dakota economic development foundation - Executive committee - Duties.**

The North Dakota economic development foundation is created.

1. The foundation is composed of a minimum of fifteen and a maximum of thirty members appointed by the governor for two-year terms, except the governor shall appoint approximately one-half of the initial foundation members to one-year terms in order to initiate a cycle of staggered terms. Appointment of the foundation members must ensure a cross section of business, tourism, and economic development representation, and must ensure that at least one member represents rural concerns.
2. The foundation members shall elect an executive committee with a minimum of five and a maximum of seven foundation members, which shall include a chairman, vice chairman, secretary, treasurer, and up to three members at large.
3. The foundation shall seek funding for administrative expenses from private sector sources and shall seek and distribute private sector funds for use in commerce-related activities of the state. The private sector funds are not public moneys for any purpose and are not subject to section 12 of article X of the Constitution of North Dakota.
4. The foundation shall:
  - a. Provide the governor advice and counsel in selecting the commissioner.
  - b. Serve in an advisory role to the commissioner.
  - c. Develop a strategic plan for economic development in the state and set accountability standards, measurements, and benchmarks to evaluate the effectiveness of the department in implementing the strategic plan.
  - d. ~~Develop a strategic plan for the development of value-added agriculture in the state.~~
  - e. Monitor ~~tourism and~~ economic development activities and initiatives of the department.
  - ~~f. e.~~ Recommend state and federal legislation relating to strengthening the state's economy and increasing the state's population.
  - ~~g. f.~~ Monitor state and federal legislation and initiatives that may impact the state's economy and population.
  - ~~h. g.~~ Serve as a source of expertise for developing public and private initiatives to strengthen the state's economy and increase the state's population.

**SECTION 5. AMENDMENT.** Section 54-60-16 of the North Dakota Century Code is amended and reenacted as follows:

**54-60-16. (Effective through June 30, 2011) International business and trade office - Advisory board.**

1. The commissioner shall administer the international business and trade office. The purpose of the office is to assist North Dakota businesses expand exports to international markets by:
  - a. Advocating for exporters;
  - b. Offering export educational opportunities to North Dakota businesses;
  - c. Researching and raising awareness of export opportunities, issues, and challenges impacting North Dakota businesses;
  - d. Assisting North Dakota businesses in identifying, developing, and cultivating international markets for products; and
  - e. Organizing and carrying out trade missions that seek to facilitate contact and communication between North Dakota businesses and international markets.
2. The commissioner may designate a nonprofit corporation incorporated in this state that has the primary purpose of assisting North Dakota exporters or contract with a third party for the provision of services for the international business and trade office. If the commissioner designates a nonprofit corporation or contracts with a third party under this subsection, all data and data bases collected and created by the third party in performing services for the office are the property of the department and the third party.
3. The department may seek and accept any gift, grant, or donation of funds, property, services, or other assistance from public or private sources for the purpose of furthering the objectives of the international business and trade office.
4. The commissioner may establish an international business and trade office advisory board with which the director may consult in administering the international business and trade office. Each member of the advisory board created under this subsection is entitled to receive per diem compensation at a rate established by the director not exceeding sixty-two dollars and fifty cents and reimbursement of expenses as provided by law for state officers, while attending meetings or performing duties directly related to board membership, except that per diem compensation under this section may not be paid to any member who receives compensation or salary as a regular state employee or official.

**~~(Effective after June 30, 2011) International business and trade office - Advisory board.~~**

- ~~1. The commissioner shall administer the international business and trade office. The purpose of the office is to assist North Dakota businesses expand exports to international markets by:~~
  - ~~a. Advocating for exporters;~~
  - ~~b. Offering export educational opportunities to North Dakota businesses;~~

- ~~e. Researching and raising awareness of export opportunities, issues, and challenges impacting North Dakota businesses;~~
  - ~~d. Assisting North Dakota businesses in identifying, developing, and cultivating international markets for products; and~~
  - ~~e. Organizing and carrying out trade missions that seek to facilitate contact and communication between North Dakota businesses and international markets.~~
- ~~2. The commissioner may contract with a third party for the provision of services for the international business and trade office. If the commissioner contracts with a third party under this subsection, all data and data bases collected and created by the third party in performing services for the office are the property of the department and the third party.~~
  - ~~3. The department may seek and accept any gift, grant, or donation of funds, property, services, or other assistance from public or private sources for the purpose of furthering the objectives of the international business and trade office.~~
  - ~~4. The commissioner may establish an international business and trade office advisory board with which the director may consult in administering the international business and trade office. Each member of the advisory board created under this subsection is entitled to receive per diem compensation at a rate established by the director not exceeding sixty-two dollars and fifty cents and reimbursement of expenses as provided by law for state officers, while attending meetings or performing duties directly related to board membership, except that per diem compensation under this section may not be paid to any member who receives compensation or salary as a regular state employee or official.~~

**SECTION 6. AMENDMENT.** Section 54-60-25 of the North Dakota Century Code is amended and reenacted as follows:

**54-60-25. North Dakota rural development council - Composition.**

The North Dakota rural development council is created.

1. The North Dakota rural development council is composed of a minimum of nine and a maximum of seventeen members. The commissioner is an ex officio voting member of the council. The governor shall appoint council members for two-year terms, except the governor shall appoint approximately one-half of the initial council members to one-year terms in order to initiate a cycle of staggered terms. Appointment of the council members must ensure representation from ~~eight~~<sup>four</sup> regions designated by the commissioner. Members of the council serve at the pleasure of the governor.
2. The council shall select its own officers who shall serve for a term of two years commencing on October first of each year.
3. The council shall have at least two meetings each year and such additional meetings as the chairman determines necessary at a time and place to be fixed by the chairman. Special meetings must be called by the chairman on written request of any four members. A simple majority of the council constitutes a quorum and may act upon any matter coming before the council.

Members of the council are entitled to reimbursement in the same manner and at the same rate provided by law for other state officials.

4. The council, in cooperation with the rural development office, shall:
  - a. Facilitate collaboration among federal, state, local, and tribal governments and the private and nonprofit sectors in the planning and implementation of programs and policies that have an impact on rural areas of the state;
  - b. Monitor, report, and comment on policies and programs that address, or fail to address, the needs of the rural areas of the state; and
  - c. Facilitate the development of strategies to reduce or eliminate conflicting or duplicative administrative or regulatory requirements of federal, state, local, and tribal governments.

**SECTION 7. REPEAL.** Sections 4-14.1-01.1 and 54-34.3-12 of the North Dakota Century Code are repealed.

**SECTION 8. EFFECTIVE DATE.** Section 5 of this Act becomes effective on July 1, 2011.

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

Approved March 28, 2011  
Filed March 28, 2011



# STATE HISTORICAL SOCIETY AND STATE PARKS

## CHAPTER 440

### SENATE BILL NO. 2117

(Natural Resources Committee)

(At the request of the Parks and Recreation Department)

AN ACT to create and enact subsection 12 to section 55-08-01.3 and sections 55-08-18 and 55-08-19 of the North Dakota Century Code, relating to parks and recreation department rule violations and penalties; to amend and reenact section 55-08-17 and subsection 13 of section 55-11-09 of the North Dakota Century Code, relating to parks and recreation department rule violations and penalties; to provide a penalty; and to declare an emergency.

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

**SECTION 1.** Subsection 12 to section 55-08-01.3 of the North Dakota Century Code is created and enacted as follows:

12. Establish noncriminal penalties for violation of rules adopted by the director. The maximum noncriminal penalty is a fine of two hundred fifty dollars. Department personnel designated by the director shall have the power to enforce noncriminal violations of these rules. Fines collected for violation of these rules must be deposited in the general fund.

**SECTION 2.** Section 55-08-18 of the North Dakota Century Code is created and enacted as follows:

#### **55-08-18. Violations noncriminal - Procedures.**

Any person who has been cited for a violation of this title or related rules may appear before a court of competent jurisdiction and pay the statutory fee at or prior to the time scheduled for a hearing or, if bond has been posted, may forfeit the bond by not appearing at the scheduled time. A person appearing at the time scheduled in the citation may make a statement in explanation of that person's action and the judge may at that time waive, reduce, or suspend the statutory fee or bond, or both. If the person cited follows the foregoing procedures, that person has admitted the violation and has waived the right to a hearing on the issue of commission of the violation. The bond required to secure appearance before the judge must be identical to the administrative fee established by section 55-08-19. Within ten days after forfeiture of bond or payment of the statutory fee, the judge shall certify to the director admission of the violation.

**SECTION 3.** Section 55-08-19 of the North Dakota Century Code is created and enacted as follows:

**55-08-19. Amount of statutory fees.**

The fees required for a noncriminal disposition pursuant to section 55-08-18 are as follows:

1. For a class 1 noncriminal offense, a fee of one hundred dollars.
2. For a class 2 noncriminal offense, a fee of fifty dollars.
3. For a class 3 noncriminal offense, a fee of twenty-five dollars.
4. For violation of a rule approved by the director, the amount set in the rule, up to a maximum of two hundred fifty dollars.
5. The director shall have the discretion to classify violations of parks and recreation department rules.

**SECTION 4. AMENDMENT.** Section 55-08-17 of the North Dakota Century Code is amended and reenacted as follows:

**55-08-17. General penalty.**

Any person violating a provision of this chapter for which a penalty is not specifically provided is guilty of ~~an infraction~~ a noncriminal violation.

**SECTION 5. AMENDMENT.** Subsection 13 of section 55-11-09 of the North Dakota Century Code is amended and reenacted as follows:

- ~~13. To adopt and enforce suitable rules relating to the protection, care, and use of any state nature preserve or state-owned or state-managed natural area. The violation of any such rule constitutes an infraction. Enforcement of these rules shall comply with the powers granted in chapter 55-08.~~

**SECTION 6. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 20, 2011  
Filed April 20, 2011

# TAXATION

## CHAPTER 441

### SENATE BILL NO. 2294

(Senators Cook, Stenehjem, Wardner)  
(Representatives Carlson, Belter, Froseth)

AN ACT to amend and reenact subsection 7 of section 57-01-02, sections 57-01-05 and 57-02-11, subsection 3 of section 57-12-06, and sections 57-13-04, 57-13-05, 57-13-07, 57-13-08, and 57-14-08 of the North Dakota Century Code, relating to assessments of property, powers and duties of the state supervisor of assessments, listing of individual property records, the duties of the state board of equalization, and the duties of county assessors.

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

**SECTION 1. AMENDMENT.** Subsection 7 of section 57-01-02 of the North Dakota Century Code is amended and reenacted as follows:

7. May require a ~~reassessment~~new assessment of property in any county to be made in accordance with chapter 57-14, whenever that is deemed necessary, or may require county auditors to place on the assessment rolls property which may be discovered and which has not been taxed according to law. For purposes of this subsection, "new assessment" means a new assessment as defined in section 57-14-08.

**SECTION 2. AMENDMENT.** Section 57-01-05 of the North Dakota Century Code is amended and reenacted as follows:

#### **57-01-05. State supervisor of assessments.**

The state tax commissioner shall appoint a supervisor of assessments who must be a person trained and experienced in property appraisals and familiar with assessment and equalization procedures and techniques. The supervisor of assessments serves at the pleasure of the state tax commissioner and office space must be furnished to the supervisor of assessments by the commissioner.

The supervisor of assessments shall perform the following duties under the direction of the tax commissioner:

1. The supervisor of assessments shall advise and give the various assessors in the state the necessary instructions and directions as to their duties under the laws of this state, to the end that a uniform assessment of all real and personal property in this state will be attained.
2. The supervisor of assessments shall assist and instruct the various assessors in this state in the use of soil reconnaissance surveys, land classification methods, in the preparation and proper use of land maps and record cards, in

the proper classification of real and personal property, and in the determination of proper standards of value.

3. The supervisor of assessments may require the attendance of groups of assessors at meetings called by the supervisor of assessments for the purpose of giving them further assistance and instruction as to their duties.
4. The supervisor of assessments may make sales, market, and productivity studies and other studies of property assessments in the various counties and cities of this state for the purpose of properly advising the various assessors and directors of tax equalization in the state and for the purpose of recommending to the tax commissioner changes to be made by the state board of equalization in the performance of the equalization powers and duties prescribed for it by section 57-13-04. In any sales, market, and productivity study made according to section 57-01-06, the county directors of tax equalization or city assessors, as the case may be, are responsible for compiling a record of sales of property made in the county or city, and in conjunction with the county commissioners shall analyze the sales for the purpose of advising the state supervisor of assessments as to the value of using the sales in any such study. The compilations must be forwarded to the state supervisor of assessments with the findings of the county director of tax equalization, city assessors, and the board of county commissioners. In any county or city or any part thereof where the number of sales of properties is insufficient for making a sales, market, and productivity study, the county director of tax equalization or city assessor, as the case may be, in cooperation with the state supervisor of assessments or that person's assistants shall make appraisals of properties in order to determine the market value.
5. The supervisor of assessments shall cooperate with North Dakota state university in the development of a soil mapping program, a land classification system, valuation studies, and other matters relating to the assessment of property and shall provide for the use of such information and procedure at the earliest possible date by the assessors of this state.
6. The supervisor of assessments has general supervision of assessors and county directors of tax equalization pertaining to methods and procedures of assessment of all property and has authority to require all county directors of tax equalization to do any act necessary to obtain uniform methods and procedures of assessment.
7. Whenever an investigation by the state supervisor of assessments shows there is probable cause to believe the holder of a certificate issued by the state supervisor of assessments under chapter 11-10.1 has failed to comply with any of the provisions of this title pertaining to assessments, or any rules prescribed by the tax commissioner, the state supervisor of assessments may petition the tax commissioner for a hearing to show cause why the certificate should be suspended or revoked.
  - a. The state supervisor of assessments must provide the certificate holder at least ten days' notice of the time and place of the hearing.
  - b. If cause to suspend or revoke the certificate is shown, the tax commissioner may suspend or revoke the certificate.

- c. The tax commissioner may restore a certificate after suspension or revocation.
  - d. An individual whose certificate has been suspended or revoked in the manner provided in this section may appeal that determination to the district court.
8. If a certificate holder's certificate is suspended or revoked under this section, the governing body of the county in which the certificate holder performs duties shall ensure the continued administration of assessments within that county by a person authorized under section 11-10.1-05 and be responsible for any expenses associated with the fulfillment of this responsibility. Expenses incurred by a county to fulfill the duties of a township or city assessment official whose certificate has been suspended or revoked must be charged to the political subdivision in which the certificate holder is employed and must either be paid directly to the county by the political subdivision or deducted by the county treasurer from funds coming into the treasurer's control which are apportionable to the subdivision.
9. The supervisor of assessments shall perform such other duties relating to assessment and taxation of property as the tax commissioner directs.
10. The tax commissioner may prescribe rules necessary for the detailed and efficient administration of this section.

<sup>137</sup> **SECTION 3. AMENDMENT.** Section 57-02-11 of the North Dakota Century Code is amended and reenacted as follows:

**57-02-11. Listing of property - Assessment thereof.**

~~Property must be listed and assessed~~Certified assessment officials must list and assess property as follows:

1. All real property subject to taxation must be listed and assessed every year with reference to its value, on February first of that year.
2. An individual property record must be kept by the appropriate assessment official for each parcel of taxable property. The record may be in electronic or paper form and must include identifying information as prescribed by the state supervisor of assessments. Assessors shall prepare the records and provide copies of all property records prepared by the assessor to the county director of tax equalization. The county director of tax equalization shall maintain those records for ten years from the date the records were received from the assessors. A city with a population of five thousand or more may elect to maintain the records required under this subsection on behalf of the county. A city that makes this election must include these records in a city database of taxable property to be maintained in the office of city assessor for ten years from the assessment date.
3. Whenever after the first day of February and before the first day of April in any year, it is made to appear to the assessor by the oath of the owner that any building, structure, or other improvement, or tangible personal property, which is listed for taxation for the current year has been destroyed or

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<sup>137</sup> Section 57-02-11 was also amended by section 3 of House Bill No. 1116, chapter 446.

~~injured~~damaged by fire, flood, or tornado, or other natural disaster, the assessor shall investigate the matter and deduct from the valuation of the property of the owner of such destroyed property an amount which in the assessor's judgment fairly represents such deduction as should be made.

**SECTION 4. AMENDMENT.** Subsection 3 of section 57-12-06 of the North Dakota Century Code is amended and reenacted as follows:

3. The owner of any separate piece or parcel of real estate that has been assessed may appeal the assessment thereon to the state board of equalization as provided in ~~subdivision a of subsection 3 of section 57-13-04~~; provided, however, that such owner has first appealed the assessment to the local equalization board of the taxing district in which the property was assessed and to the county board of equalization of the county in which the property was assessed. Notwithstanding this requirement, an owner of property which has been subjected to a new assessment authorized under section 57-14-08 may appeal the new assessment to the state board of equalization in the manner provided for in section 57-14-08.

**SECTION 5. AMENDMENT.** Section 57-13-04 of the North Dakota Century Code is amended and reenacted as follows:

**57-13-04. General duties and powers of board.**

The state board of equalization shall equalize the valuation and assessment of property throughout the state, and has power to equalize the assessment, classification, and exemption status of property in this state between assessment districts of the same county, and between the different counties of the state. It shall:

1. Equalize the assessment of real property by adding to the aggregate value thereof in any assessment district in a county and in every county in the state in which the board may believe the valuation too low, such percentage rate as will raise the same to its proper value as provided by law, and by deducting from the aggregate assessed value thereof, in any assessment district in a county and every county in the state in which the board may believe the value too high, such percentage as will reduce the same to its proper value as provided by law. City lots must be equalized in the manner provided for equalizing other real property.
2. In making such equalization, add to or deduct from the aggregate assessed valuation of lands and city lots such percentage as may be deemed by the board to be equitable and just, but in all cases of addition to or deduction from the assessed valuation of any class of property in the several assessment districts in each county and in the several counties of the state, or throughout the state, the percentage rate of addition or deduction must be even and not fractional.
3. In equalizing individual assessments:
  - a. If it believes an assessment to be too high, the board may reduce the assessment on any separate piece or parcel of real estate if the ~~taxpayer~~owner of the property has appealed such assessment to the board either by appearing personally or by a representative before the board or by mail or other communication to the board in which the ~~taxpayer's~~property owner's reasons for asking for the reduction are made known to the board.

- (1) The board does not have authority to reduce an assessment until the taxpayer-owner of the property has established to the satisfaction of the board that the taxpayer-owner of the property had first appealed the assessment to the local equalization board of the taxing district in which the property was assessed and to the county board of equalization of the county in which the property was assessed.
- (2) The board does not have authority to reduce a new assessment provided for under section 57-14-08 until the owner of the property has established to the satisfaction of the board that the owner of the property had first appealed the assessment to the county board of equalization of the county in which the property was assessed.
- b. If it believes an assessment to be too low, the board may increase the assessment on any separate piece or parcel of real estate. The secretary of the board, by mail sent to the last-known address of the owner to whom the property was assessed, shall notify such person of the amount of increase made by the board in such assessment.
- c. The percentage of reduction or increase made by the board under this subsection in any assessment must be a whole-numbered amount and not a fractional amount.
4. Equalize the classification and taxable status of real property in any assessment district in a county and in every county in the state in which the board determines the classification or taxable status is incorrect or inequitable. The board may equalize property under this subsection if information is received indicating that property within the assessment district or county may be erroneously classified or the property's taxable status is incorrect. The board may also equalize property under this subsection if a property owner has properly appealed the property's classification or taxable status. In the case of an appeal, the owner of the property must establish to the satisfaction of the board that the owner of the property had first appealed the classification or taxable status determination to the local equalization board of the taxing district in which the property is situated and to the county board of equalization of the county in which the property is situated.
5. Provide for reviews of selected properties, parcels, or lots within each county by the tax commissioner, state supervisor of assessments, or their designee, to verify the accuracy of real property assessment listings, valuations, classifications, and eligibility for exemptions. The reviews must be examined by the state board of equalization at its annual meeting in August. The board may make necessary corrections in the property assessment listings, valuations, classifications, and eligibility for exemptions or direct the affected township, city, or county governing body to make the corrections ordered by the state board of equalization resulting from its examination of the reviews provided for in this section.
6. The board may prescribe rules and regulations necessary and advisable for the detailed administration of and compliance with this section.
7. If any county or county official fails to take action ordered by the state board of equalization under the authority granted to it in this chapter or chapter 57-02, the board may petition any judge of the district court to issue a restraining order, writ of mandamus, or other form of declaratory or injunctive relief

requiring the county or county official to comply with the order of the board. The order or notice upon the petition shall be returnable not more than ten days after the filing of the petition. The petition must be heard and determined on the return day, or on such day thereafter as the court shall fix, having regard to the speediest possible determination of the case consistent with the rights of the parties. The county or county official must show cause why the county or county official should not comply with any directive or order of the board. The judgment must include costs in favor of the prevailing party.

8. The board may order a new assessment of any class of property, or of all the property, located within any political subdivision if, in its opinion, taxable property located within that subdivision has escaped assessment in whole or in part, has been assessed unfairly, or has not been assessed according to law. A new assessment ordered by the board must be made as provided in section 57-14-08.

**SECTION 6. AMENDMENT.** Section 57-13-05 of the North Dakota Century Code is amended and reenacted as follows:

**57-13-05. Hearing before state board of equalization.**

The board of county commissioners of any of the several counties, or any representative thereof in its place or stead, or any city council or board of city commissioners or any representative thereof, any township supervisors, or representative groups of taxpayers or taxpayers' associations, or any individual representing the same, may appear before the state board of equalization to be heard for the purpose of opposing any unreasonable or unjust increase or decrease in the valuation or determination of classification of the taxable property of the county, city, or township represented as equalized by the county board of equalization, ~~or of~~ opposing any increase or decrease in ~~such~~the valuation or determination of classification as proposed by the state board of equalization, or opposing a determination of taxable status made by a county board of equalization. to the end that all valuations or classifications of like taxable property may be uniform and equal throughout the state and exemption determinations made by a county board of equalization are found reasonable by the state board of equalization.

**SECTION 7. AMENDMENT.** Section 57-13-07 of the North Dakota Century Code is amended and reenacted as follows:

**57-13-07. Proceedings to be published - Abstract sent to county auditors.**

The secretary shall keep a record of the proceedings of the board, which must be published by the secretary in an annual report. Upon final adjournment, the secretary shall transmit to each county auditor an abstract of such proceedings specifying the percentage added to or deducted from the valuation of the real property of each of the counties, in case an equal percentage has not been added to or deducted from each, and specifying also the percentage added to or deducted from the several classes of personal property in each of the counties in the state, and such other information as will enable each auditor properly to equalize or make corrections to the valuation or classification of taxable property or status with regard to exemption of property in the auditor's county, and to determine the taxable rates thereof.

**SECTION 8. AMENDMENT.** Section 57-13-08 of the North Dakota Century Code is amended and reenacted as follows:



### **57-13-08. Duty of county auditor after equalization by state board.**

Upon receipt of the report of the proceedings of the state board of equalization, the county auditor shall add to or deduct from each tract or lot of real property in the auditor's county the required percentage of the valuation thereof, as it stands after the same has been equalized by the county board of equalization, adding in each case any fractional sum of fifty cents or more, and deducting in each case any fractional sum of less than fifty cents, so that the value of any separate tract or lot contains no fraction of a dollar. The county auditor shall revalue each tract or lot of real property that is reclassified by the state board of equalization using the proper valuation method for the class of taxable property as specified by the state board of equalization. The county auditor shall adjust the status of a tract or lot to comply with any determinations made by the state board of equalization in which the tract or lot is found by the state board of equalization to be taxable or exempt.

**SECTION 9. AMENDMENT.** Section 57-14-08 of the North Dakota Century Code is amended and reenacted as follows:

### **57-14-08. ~~General reassessment~~New assessment of property - Allowance.**

For purposes of this section, a "new assessment" means an assessment ordered by a board of county commissioners, or as authorized under section 57-01-02 or 57-13-04, of any class of property, or of all property, located within any political subdivision of the county if taxable property located within a subdivision has escaped assessment in whole or in part, has been assessed unfairly, or has not been assessed according to law. A ~~reassessment~~new assessment may be made as follows:

1. Upon the filing of a petition signed by not less than ten freeholders in a political subdivision, or by the governing body of that subdivision, requesting a ~~reassessment~~new assessment of property in the subdivision or upon investigation by the board of county commissioners, the board of county commissioners, before October first, may order a ~~reassessment~~new assessment of any class of property, or of all property, located within the subdivision or within any subdivision if, ~~in its opinion, taxable property located within the subdivision has escaped assessment in whole or in part, or has been assessed unfairly, or has not been assessed according to law. The state board of equalization or the tax commissioner may order a new assessment of~~ any class of property or all property located in any political subdivision. The new assessment and equalization must be conducted under the terms and conditions as set forth in the state board of equalization or tax commissioner's order. The local governing body responsible for performing the new assessment may petition the state board of equalization or tax commissioner for a modification of any or all of the order's terms and conditions. The state board of equalization or tax commissioner may for good cause shown grant all or part of the modification request.
2. The board of county commissioners then may appoint a competent citizen of this state as a special assessor who shall make a ~~reassessment~~new assessment of the property specified by the board and who shall proceed in accordance with the provisions of law governing assessors. The special assessor may be selected by competitive bidding or a process determined by the board of county commissioners. The special assessor is entitled to reasonable compensation by the board of county commissioners for the special assessor's services, together with meals and lodging as allowed by law, and mileage expense at the rate allowed by law for each mile

[1.61 kilometers] actually and necessarily traveled in the performance of that person's duties, which must be audited and allowed by the board of county commissioners and paid out of the county treasury upon warrant of the county auditor. If the ~~reassessment~~new assessment was ordered by the state board of equalization or tax commissioner, the state board of equalization or tax commissioner shall appoint a competent citizen of this state as a special assessor who shall make a ~~reassessment~~new assessment of the property specified by the state board of equalization or tax commissioner and ~~who to be completed under the terms and conditions set forth in the order; the special assessor~~ shall proceed in accordance with the provisions of the law governing assessors; the special assessor is entitled to reasonable compensation by the state board of equalization or tax commissioner for that person's services plus meals, lodging, and mileage expense at the rates provided by law, and the state board of equalization or tax commissioner shall audit and allow the bill, and the same must be paid out of the county treasury. In either case, the compensation must be charged to the political subdivision in which the ~~reassessment~~new assessment was made and must be deducted by the county treasurer from funds coming into the treasurer's hands apportionable to the subdivision. The board of county commissioners, state board of equalization, or tax commissioner who appoints a special assessor may authorize such assistants as may be necessary to aid the special assessor and shall allow reasonable compensation for each of the assistants plus meals, lodging, and mileage expense at the rates provided by law, which amounts must be audited, allowed, and paid and must be charged to the political subdivision ~~reassessed~~in which the new assessment occurred in the manner provided for the special assessor.

3. Upon completion of the ~~reassessment~~terms and conditions of the new assessment order, the assessor shall certify the result to the county auditor, who forthwith shall give notice by mail to the state tax commissioner and the board of county commissioners and the governing boards of each township, city, and school district which is wholly or partially within the ~~reassessment~~newly assessed district, that a ~~reassessment~~new assessment has been completed in the named assessment district as provided under this section and that a meeting for the purpose of equalizing the assessment will be held in the county courthouse on the day and at the time specified ~~in the notice for the meeting of the county board of equalization~~. Each board shall appoint one of its members to attend the equalization meeting and the tax commissioner shall attend or appoint a representative from the commissioner's office to attend the meeting. ~~The group of persons comprise the special board of equalization for the reassessment. The member representing the board of county commissioners serves as chairman and the county auditor serves as secretary for the special board of equalization. The meeting must be held not later than thirty days from the date of the written notice of the meeting mailed by the county auditor. A notice of the special meeting and its purpose that the new assessment provided for under this section will be considered during the meeting of the county board of equalization must be published at least once in the official newspaper of the county in which the reassessment new assessment was made not less than one week prior to the meeting. Each person, except the tax commissioner or the commissioner's appointee, serving on this special board of equalization is entitled to compensation at the rate of up to forty five dollars per day plus mileage expense and necessary expenses for meals and lodging at the rate allowed by law for attendance at the meeting. Claims therefor must be audited and allowed by the board of county commissioners and must be paid,~~

~~charged, and deducted in the same manner as the claim of the special assessor.~~ The claims for mileage expense and necessary expenses for meals and lodging of the tax commissioner or the commissioner's appointee in attending the special equalization meeting must be audited, allowed, and paid as are other similar claims made by them.

4. When any special assessor has increased the true and full valuation of any lot or tract of land including any improvements to that lot or tract of land by three thousand dollars or more and ~~to~~ by ten percent or more of the last assessment as a result of the new assessment provided for under this section, written notice of the amount of increase over the last assessment and the amount of the last assessment must be delivered in writing by the special assessor to the property owner, mailed in writing to the property owner at the property owner's last-known address, or provided to the property owner by electronic mail directed with verification of receipt to an electronic mail address at which the property owner has consented to receive notice. The tax commissioner shall prescribe suitable forms for this notice and the notice must also show the true and full value as defined by law of the property, including improvements, that the special assessor used in making the ~~reassessment~~ new assessment and must also show the date prescribed by law for the meeting of the ~~special county~~ board of equalization of the ~~assessment district~~ county in which the property is located. Delivery of notice to the property owner under this section must be completed at least fifteen days in advance of the meeting date of the ~~special county~~ board of equalization and at the expense of the assessment district for which the special assessor is employed.
5. At the meeting, the ~~special county~~ board of equalization shall hear all grievances and complaints in regard to the ~~reassessment~~ new assessment provided for under this section and shall proceed to equalize the same. All tax lists must be corrected to comply with the action.
6. Any property owner aggrieved by a decision of the county board of equalization with regard to the new assessment provided for under this section may appeal that decision to the state board of equalization at its August meeting. The board does not have authority to reduce a new assessment until the owner of property has established to the satisfaction of the board that the owner of the property had first appealed the new assessment to the county board of equalization of the county in which the property was assessed.

Approved April 20, 2011  
Filed April 20, 2011

## CHAPTER 442

### HOUSE BILL NO. 1071

(Representatives Drovdal, Kempenich, Hatlestad, Rust)  
(Senator Lyson)

AN ACT to amend and reenact subsection 1 of section 57-02-01 of the North Dakota Century Code, relating to retention of property tax status as agricultural property for property previously devoted to agricultural uses which is being used for mineral extraction and for which the surface owner owns none of the subsurface mineral rights; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 57-02-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Agricultural property" means platted or unplatted lands used for raising agricultural crops or grazing farm animals, except lands platted and assessed as agricultural property prior to March 30, 1981, shall continue to be assessed as agricultural property until put to a use other than raising agricultural crops or grazing farm animals. Agricultural property includes land on which a greenhouse or other building is located if the land is used for a nursery or other purpose associated with the operation of the greenhouse. The time limitations contained in this section may not be construed to prevent property that was assessed as other than agricultural property from being assessed as agricultural property if the property otherwise qualifies under this subsection.
  - a. Property platted on or after March 30, 1981, is not agricultural property when any four of the following conditions exist:
    - ~~a.~~(1) The land is platted by the owner.
    - ~~b.~~(2) Public improvements, including sewer, water, or streets, are in place.
    - ~~c.~~(3) Topsoil is removed or topography is disturbed to the extent that the property cannot be used to raise crops or graze farm animals.
    - ~~d.~~(4) Property is zoned other than agricultural.
    - ~~e.~~(5) Property has assumed an urban atmosphere because of adjacent residential or commercial development on three or more sides.
    - ~~f.~~(6) The parcel is less than ten acres [4.05 hectares] and not contiguous to agricultural property.
    - ~~g.~~(7) The property sells for more than four times the county average true and full agricultural value.
  - b. Land that was assessed as agricultural property at the time the land was put to use for extraction of oil, natural gas, or subsurface minerals as defined in section 38-12-01 must continue to be assessed as agricultural

property if the remainder of the surface owner's parcel of property on which the subsurface mineral activity is occurring continues to qualify for assessment as agricultural property under this subsection.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2010.

Approved April 19, 2011  
Filed April 19, 2011

## CHAPTER 443

### HOUSE BILL NO. 1223

(Representative Belter)  
(Senator G. Lee)

AN ACT to amend and reenact subsection 3 of section 57-02-08 of the North Dakota Century Code, relating to property tax exemption of the leasehold interest when a political subdivision leases property from another political subdivision.

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

<sup>138</sup> **SECTION 1. AMENDMENT.** Subsection 3 of section 57-02-08 of the North Dakota Century Code is amended and reenacted as follows:

3. All property belonging to any political subdivision and the leasehold interest in property leased by a political subdivision from another political subdivision.

Approved March 29, 2011  
Filed March 29, 2011

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<sup>138</sup> Section 57-02-08 was also amended by section 1 of House Bill No. 1046, chapter 486, and section 1 of Senate Bill No. 2049, chapter 444, and subsection 7 was repealed by section 2 of House Bill No. 1246, chapter 445.

## CHAPTER 444

### SENATE BILL NO. 2049

(Legislative Management)  
(Taxation Committee)

AN ACT to amend and reenact subsection 8 of section 57-02-08 of the North Dakota Century Code, relating to exclusion of certain subsidized rental property from the property tax exemption for property used for charitable or other public purposes; and to provide an effective date.

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

<sup>139</sup> **SECTION 1. AMENDMENT.** Subsection 8 of section 57-02-08 of the North Dakota Century Code is amended and reenacted as follows:

8. All buildings belonging to institutions of public charity, including public hospitals and nursing homes licensed pursuant to section 23-16-01 under the control of religious or charitable institutions, used wholly or in part for public charity, together with the land actually occupied by such institutions not leased or otherwise used with a view to profit, ~~and this,~~
  - a. The exemption provided by this subsection includes any dormitory, dwelling, or residential-type structure, together with necessary land on which such structure is located, owned by a religious or charitable organization recognized as tax exempt under section 501(c)(3) of the United States Internal Revenue Code which is occupied by members of said organization who are subject to a religious vow of poverty and devote and donate substantially all of their time to the religious or charitable activities of the owner.
  - b. For purposes of this subsection and section 5 of article X of the Constitution of North Dakota, property is not used wholly or in part for public charity or charitable or other public purposes if that property is residential rental units leased to tenants based on income levels that enable the owner to receive a federal low-income housing income tax credit.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2011.

Approved April 27, 2011  
Filed April 27, 2011

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<sup>139</sup> Section 57-02-08 was also amended by section 1 of House Bill No. 1046, chapter 486, and section 1 of House Bill No. 1223, chapter 443, and subsection 7 was repealed by section 2 of House Bill No. 1246, chapter 445.

## CHAPTER 445

### HOUSE BILL NO. 1246

(Representatives Weisz, Belter)  
(Senator Hogue)

AN ACT to amend and reenact subsection 9 of section 57-02-08 of the North Dakota Century Code, relating to the property tax exemption for church property; to repeal subsection 7 of section 57-02-08 of the North Dakota Century Code, relating to a property tax exemption for certain church property; to provide for a legislative management study; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Subsection 9 of section 57-02-08 of the North Dakota Century Code is amended and reenacted as follows:

9. ~~All real property, not exceeding two acres [.81 hectare] in extent, owned by any religious corporation or organization, upon which there is a building used for the religious services of the organization, or upon which there is a dwelling with usual outbuildings, intended and ordinarily used for the residence of the bishop, priest, rector, or other minister in charge of services, buildings owned by any religious corporation or organization and used for the religious services of the organization, and if on the same parcel, dwellings with usual outbuildings, intended and ordinarily used for the residence of the bishop, priest, rector, or other minister in charge of services, land directly under and within the perimeter of those buildings, improved off-street parking or reasonable landscaping or sidewalk area adjoining the main church building, and up to a maximum of two additional acres [.81 hectare] must be deemed to be property used exclusively for religious services, and exempt from taxation, whether the real property consists of one tract or more. If the residence of the bishop, priest, rector, or other minister in charge of services is located on property not adjacent to the church, that residence with usual outbuildings and land on which it is located, up to two acres [.81 hectare], is exempt from taxation.~~ The exemption for a building used for the religious services of the owner continues to be in effect if the building in whole, or in part, is rented to another otherwise tax-exempt corporation or organization, provided no profit is realized from the rent. ~~All real property owned by any religious corporation or organization and used as a parking lot by persons attending religious services is exempt from taxation. All taxes assessed or levied on any of the property, while the property is used for religious purposes, are void.~~

<sup>140</sup> **SECTION 2. REPEAL.** Subsection 7 of section 57-02-08 of the North Dakota Century Code is repealed.

**SECTION 3. LEGISLATIVE MANAGEMENT STUDY - SALES TAX EXEMPTION FOR CHARITABLE NONPROFITS.** During the 2011-12 interim, the legislative management shall consider studying the feasibility and desirability of extending the

<sup>140</sup> Section 57-02-08 was amended by section 1 of House Bill No. 1046, chapter 486, section 1 of House Bill No. 1223, chapter 443, and section 1 of Senate Bill No. 2049, chapter 444.



sales tax exemption on purchases of tangible property to all charitable nonprofit organizations so that all such organizations are treated equally and fairly under state law. The legislative management also may undertake a comparative analysis of the efficacy of sales tax exemptions and rate reductions, including, for each exemption or reduction, a detailed analysis of the fiscal impact to the state; benefits to the state economy from eliminating or retaining the exemption or rate reduction; the relationship of the exemption or rate reduction to tax policies of other states and to federal or state laws or regulations; and who are the beneficiaries of each exemption or rate reduction, specifically including the extent to which the benefits flow to out-of-state concerns. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

**SECTION 4. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2010.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 446

### HOUSE BILL NO. 1116

(Finance and Taxation Committee)  
(At the request of the Tax Commissioner)

AN ACT to amend and reenact subsection 2 of section 57-02-08.2, subsections 1, 2, and 8 of section 57-02-08.8, subsection 2 of section 57-02-11, and section 57-06-17.3 of the North Dakota Century Code, relating to homestead credit and disabled veterans certifications, the basis for calculation of the disabled veterans credit, assessment of destroyed or damaged property, and the basis for calculation of the new transmission line property tax exemption; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 57-02-08.2 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~The On or before the first of June of each year, the tax commissioner shall audit such the certifications, make such the required corrections as may be required, and certify to the state treasurer for payment to each county on or before the first of June of each year, the sum of the amounts computed by multiplying the exemption allowed for each such homestead in the county for the preceding year by the total of the tax mill rates, exclusive of any state mill rates, that was applied to other real estate in such taxing districts for that year.~~

<sup>141</sup> **SECTION 2. AMENDMENT.** Subsections 1, 2, and 8 of section 57-02-08.8 of the North Dakota Century Code are amended and reenacted as follows:

1. A disabled veteran of the United States armed forces with an armed forces service-connected disability of fifty percent or greater, who was discharged under honorable conditions or who has been retired from the armed forces of the United States, or the unremarried surviving spouse if the disabled veteran is deceased, is eligible for a credit applied against the first ~~one hundred twenty thousand dollars of true and full~~ five thousand four hundred dollars of taxable valuation of the fixtures, buildings, and improvements of the person's homestead owned and occupied by the disabled veteran or unremarried surviving spouse equal to the percentage of the disabled veteran's disability compensation rating for service-connected disabilities as certified by the department of veterans affairs for the purpose of applying for a property tax exemption.
2. If two disabled veterans are married to each other and living together, their combined credits may not exceed one hundred percent of ~~one hundred twenty thousand dollars of true and full value~~ five thousand four hundred dollars of taxable valuation of the fixtures, buildings, and improvements of the homestead. If a disabled veteran co-owns the homestead property with someone other than the disabled veteran's spouse, the credit is limited to that

<sup>141</sup> Section 57-02-08.8 was also amended by section 3 of House Bill No. 1217, chapter 447.

disabled veteran's interest in the fixtures, buildings, and improvements of the homestead, to a maximum amount calculated by multiplying ~~one hundred twenty thousand dollars of true and full~~ five thousand four hundred dollars of taxable valuation by the disabled veteran's percentage of interest in the homestead property and multiplying the result by the applicant's certified disability percentage.

8. ~~The~~On or before the first of June of each year, the tax commissioner shall audit the certifications, make ~~any~~the required corrections ~~that may be required,~~ and certify to the state treasurer for payment to each county ~~on or before the first of June of each year,~~ the sum of the amounts computed by multiplying the credit allowed for each homestead of a disabled veteran in the county by the total of the tax mill rates, exclusive of any state mill rates that were applied to other real estate in the taxing districts for the preceding year.

<sup>142</sup> **SECTION 3. AMENDMENT.** Subsection 2 of section 57-02-11 of the North Dakota Century Code is amended and reenacted as follows:

2. Whenever after the first day of February and before the first day of April in any year, it is made to appear to the assessor by the oath of the owner that any building, structure, or other improvement, or tangible personal property, which is listed for taxation for the current year has been destroyed or ~~injured~~damaged by fire, flood, ~~or~~ or tornado, or other natural disaster, the assessor shall investigate the matter and deduct from the valuation of the property of the owner of such destroyed property an amount which in the assessor's judgment fairly represents such deduction as should be made.

**SECTION 4. AMENDMENT.** Section 57-06-17.3 of the North Dakota Century Code is amended and reenacted as follows:

**57-06-17.3. New transmission line property tax exemption.**

A transmission line of two hundred thirty kilovolts or larger, and its associated transmission substations, which is not taxable under chapter 57-33.2 and is initially placed in service on or after October 1, 2002, is exempt from property taxes for the first taxable year after the line is initially placed in service, and ~~property taxes~~the taxable valuation as otherwise determined by law on the transmission line and its associated transmission substations must be reduced by:

1. Seventy-five percent for the second taxable year of operation of the transmission line.
2. Fifty percent for the third taxable year of operation of the transmission line.
3. Twenty-five percent for the fourth taxable year of operation of the transmission line.

After the fourth taxable year of operation of the transmission line, the transmission line and its associated transmission substations are exempt from property taxes and are subject to a tax at the rate of three hundred dollars per mile [1.61 kilometers] or fraction thereof of the line located in this state. The per mile tax imposed by this section applies to the transmission line and its associated transmission substations and is subject to allocation among counties in the proportion that the miles of that

<sup>142</sup> Section 57-02-11 was also amended by section 3 of Senate Bill No. 2294, chapter 441.

transmission line in the county bears to the miles of that transmission line in the state. Revenues received by each county must be deposited in the county general fund.

For purposes of this section, "initially placed in service" includes both new construction and substantial expansion of the carrying capacity of a preexisting line, and "substantial expansion" means an increase in carrying capacity of fifty percent or more.

**SECTION 5. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2010.

Approved March 28, 2011  
Filed March 28, 2011

## CHAPTER 447

### HOUSE BILL NO. 1217

(Representatives Owens, Dahl, Sanford)  
(Senators Cook, Sorvaag)

AN ACT to amend and reenact subsection 1 of section 15-10-18.2, subdivision j of subsection 2 of section 39-04-18, subsection 1 of section 57-02-08.8, and subsection 1 of section 57-40.3-04 of the North Dakota Century Code, relating to benefits for disabled veterans; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 15-10-18.2 of the North Dakota Century Code is amended and reenacted as follows:

1. "Dependent" for purposes of section 15-10-18.3 means:
  - a. A child, stepchild, spouse, widow, or widower of a resident veteran, as "veteran" is defined in section 37-01-40, who was killed in action or died from wounds or other service-connected causes, ~~was totally disabled as a result of service-connected causes~~, has a one hundred percent service-connected disability as determined by the department of veterans' affairs, has an extra-schedular rating to include individual unemployability that brings the veteran's total disability rating to one hundred percent as determined by the department of veterans' affairs, died from service-connected disabilities, was a prisoner of war, or was declared missing in action;
  - b. A child or a stepchild of a veteran, as defined in section 37-01-40, who was killed in action or died from wounds or other service-connected causes, ~~was totally disabled as a result of service-connected causes~~, has a one hundred percent service-connected disability as determined by the department of veterans' affairs, has an extra-schedular rating to include individual unemployability that brings the veteran's total disability rating to one hundred percent as determined by the department of veterans' affairs, died from service-connected disabilities, was a prisoner of war, or was declared missing in action, provided the child's other parent has been a resident of this state and was a resident of this state at the time of death or determination of total disability of the veteran; or
  - c. A child or a stepchild of a veteran, as defined in section 37-01-40, who was killed in action or died from wounds or other service-connected causes, ~~was totally disabled as a result of service-connected causes~~, has a one hundred percent service-connected disability as determined by the department of veterans' affairs, has an extra-schedular rating to include individual unemployability that brings the veteran's total disability rating to one hundred percent as determined by the department of veterans' affairs, died from service-connected disabilities, was a prisoner of war, or was declared missing in action, provided the child's other parent establishes residency in this state and maintains that residency for a period of five

years immediately preceding the child's or stepchild's enrollment at an institution under the control of the state board of higher education.

<sup>143</sup> **SECTION 2. AMENDMENT.** Subdivision j of subsection 2 of section 39-04-18 of the North Dakota Century Code is amended and reenacted as follows:

- j. Motor vehicles not exceeding twenty-six thousand pounds [11793.40 kilograms] registered gross weight owned and operated by a disabled veteran under the provisions of Public Law 79-663 [38 U.S.C. 3901] ~~or a disabled veteran~~ who has a one hundred percent service-connected disability as determined by the department of veterans' affairs, or a disabled veteran who has an extra-schedular rating to include individual unemployability that brings the veteran's total disability rating to one hundred percent as determined by the department of veterans' affairs is entitled to display a distinctive license plate issued by the department upon the payment of a fee of five dollars. This exemption applies to no more than two such motor vehicles owned by a disabled veteran at any one time.

<sup>144</sup> **SECTION 3. AMENDMENT.** Subsection 1 of section 57-02-08.8 of the North Dakota Century Code is amended and reenacted as follows:

1. A disabled veteran of the United States armed forces with an armed forces service-connected disability of fifty percent or greater or a disabled veteran who has an extra-schedular rating to include individual unemployability that brings the veteran's total disability rating to one hundred percent as determined by the department of veterans' affairs, who was discharged under honorable conditions or who has been retired from the armed forces of the United States, or the unremarried surviving spouse if the disabled veteran is deceased, is eligible for a credit applied against the first ~~one hundred twenty thousand dollars of true and full~~ five thousand four hundred dollars of taxable valuation of the fixtures, buildings, and improvements of the person's homestead equal to the percentage of the disabled veteran's disability compensation rating for service-connected disabilities as certified by the department of ~~veterans~~ veterans' affairs for the purpose of applying for a property tax exemption. An unremarried surviving spouse who is receiving department of veterans' affairs dependency and indemnity compensation receives a one hundred percent exemption as described in this subsection.

<sup>145</sup> **SECTION 4. AMENDMENT.** Subsection 1 of section 57-40.3-04 of the North Dakota Century Code is amended and reenacted as follows:

1. Any motor vehicle acquired by, or leased and in the possession of, a resident disabled veteran under the provisions of Pub. L. 79-663 [38 U.S.C. 3901] ~~or a resident disabled veteran~~ who has a one hundred percent service-connected disability as determined by the department of ~~veterans~~ veterans' affairs, or a resident disabled veteran who has an extra-schedular rating to include individual unemployability that brings the veteran's total disability rating to one

<sup>143</sup> Section 39-04-18 was also amended by section 4 of House Bill No. 1113, chapter 267, and section 1 of Senate Bill No. 2207, chapter 268.

<sup>144</sup> Section 57-02-08.8 was also amended by section 2 of House Bill No. 1116, chapter 446.

<sup>145</sup> Section 57-40.3-04 was also amended by section 5 of Senate Bill No. 2207, chapter 268, and section 1 of House Bill No. 1153, chapter 474.

hundred percent as determined by the department of veterans' affairs who registers, or is eligible to register, the vehicle with a distinctive license plate issued by the department of transportation under subdivision j of subsection 2 of section 39-04-18. An unremarried surviving spouse who is receiving department of veterans' affairs dependency and indemnity compensation retains the exemption of the deceased, qualifying veteran in this subsection.

**SECTION 5. EFFECTIVE DATE.** Section 3 of this Act is effective for taxable years beginning after December 31, 2010.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 448

### HOUSE BILL NO. 1101

(Finance and Taxation Committee)  
(At the request of the Tax Commissioner)

AN ACT to amend and reenact section 57-02-27.1 of the North Dakota Century Code, relating to the valuation of properties in townships; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 57-02-27.1 of the North Dakota Century Code is amended and reenacted as follows:

**57-02-27.1. Property to be valued at true and full value.**

All assessors and boards of equalization shall place the values of all items of taxable property at the true and full value of the property except as otherwise specifically provided by law, and the amount of taxes that may be levied on such property must be limited as provided in this chapter. For the purposes of sections 57-02-27, 57-02-27.1, 57-02-27.2, and 57-55-04, the term "true and full value" has the same meaning as provided in subsection 15 of section 57-02-01, except that "true and full value" of agricultural lands must be as determined pursuant to section 57-02-27.2.

The governing body of the city or township may establish valuations that recognize the supply of vacant lots available for sale.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2010.

Approved March 28, 2011  
Filed March 28, 2011



## CHAPTER 449

### HOUSE BILL NO. 1048

(Legislative Management)  
(Taxation Committee)

AN ACT to create and enact a new section to chapter 57-02 of the North Dakota Century Code, relating to creation of the agricultural land valuation fund; to amend and reenact subsection 10 of section 57-02-27.2 of the North Dakota Century Code, relating to extension of the deadline for counties to implement use of soil survey data in agricultural property tax assessments; to provide a continuing appropriation; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Subsection 10 of section 57-02-27.2 of the North Dakota Century Code is amended and reenacted as follows:

10. For any county that has not fully implemented use of soil type and soil classification data from detailed or general soil surveys ~~for by February first of~~ any taxable year after 2011, the tax commissioner shall direct the state treasurer to withhold five percent of that county's allocation each ~~month~~ quarter from the state aid distribution fund under section 57-39.2-26.1 ~~until that county has fully implemented use of soil type or soil classification data from detailed and general soil surveys~~ beginning with the first quarter of 2013. The amount withheld from the allocation must be deposited into the agricultural land valuation fund. The amount withheld from the allocation must be withheld entirely from the portion of the allocation which may be retained by the county and may not reduce allocations to any political subdivisions within the county.

**SECTION 2.** A new section to chapter 57-02 of the North Dakota Century Code is created and enacted as follows:

#### **Agricultural land valuation fund - Deposits - Continuing appropriation.**

There is established a special fund in the state treasury to be known as the agricultural land valuation fund. The moneys withheld under subsection 10 of section 57-02-27.2 must be deposited into the agricultural land valuation fund. All moneys deposited in the agricultural land valuation fund are appropriated as a continuing appropriation and must be allocated to the county from which the withholding was made upon certification from the tax commissioner of the implementation of subsection 7 of section 57-02-27.2 by that county.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2010.

Approved April 19, 2011  
Filed April 19, 2011

## CHAPTER 450

### HOUSE BILL NO. 1144

(Representatives Drovdal, Hatlestad)  
(Senators Andrist, Lyson)

AN ACT to create and enact chapter 57-02.4 of the North Dakota Century Code, relating to crew housing permit fees for crew housing facilities; and to declare an emergency.

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

**SECTION 1.** Chapter 57-02.4 of the North Dakota Century Code is created and enacted as follows:

##### **57-02.4-01. Definitions.**

As used in this chapter:

1. "Crew housing facilities" means one or more lodging units or skid units, ordinarily designed for human living quarters or a place of business, on a temporary or permanent basis, which are not real property, as defined in section 57-02-04, and are not mobile homes, as defined in section 57-55-01. A group of crew housing facilities that are connected physically or by common ownership may be treated as a single crew housing facility for purposes of imposition of crew housing permit fees imposed under this chapter.
2. "Crew housing permit" means a right granted by a city or county to locate crew housing facilities on property within the jurisdiction of the city or county under this chapter and to enjoy attendant services and facilities provided by the city or county.
3. "Skid unit" means a structure or group of structures, either single or multisectional, which is not built on a permanent chassis and is ordinarily designed for human living quarters or a place of business, on a temporary or permanent basis.

##### **57-02.4-02. Crew housing permit fees - Fee revenue sharing with other taxing districts.**

A city, for property within city limits, or a county, for property outside city limits, may impose crew housing permit fees that apply to crew housing facilities. Crew housing permit fees imposed by a city or county must be determined on the basis of the value of services and facilities provided to the crew housing facility by the city or county or both. A city or county imposing fees under this section may share revenues from the fees with other taxing districts in which the property is located.

##### **57-02.4-03. Exemptions.**

This chapter does not apply to:

1. Real property that is exempt from property taxation or subject to payments in lieu of taxes.
2. Mobile or manufactured homes as defined under chapter 57-55.
3. A recreational vehicle, camper, or camper trailer required to be licensed by the motor vehicle division of the department of transportation.
4. Park model trailers for which the owner has paid a park model trailer fee under section 39-18-03.2.

**57-02.4-04. Reporting requirement.**

A county or city may establish reporting requirements for crew housing facilities subject to permit fees within the jurisdiction of the county or city.

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

Approved April 27, 2011  
Filed April 27, 2011

## CHAPTER 451

### HOUSE BILL NO. 1194

(Representatives Porter, Belter, R. Kelsch)  
(Senators Cook, Fischer, Hogue)

AN ACT to create and enact a new section to chapter 57-15 of the North Dakota Century Code, relating to public hearings relating to property tax increases.

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

**SECTION 1.** A new section to chapter 57-15 of the North Dakota Century Code is created and enacted as follows:

##### **Property tax levy increase notice and public hearing.**

Notwithstanding any other provision of law, a taxing district may not impose a property tax levy in a greater number of mills than the zero increase number of mills, unless the taxing district is in substantial compliance with this section.

1. The governing body shall cause publication of notice in its official newspaper at least seven days before a public hearing on its property tax levy. A public hearing under this section may not be scheduled to begin earlier than six p.m. The notice must have at least one-half inch white space margin on all four sides and must be at least two columns wide by five inches high. The heading must be capitalized in boldface type of at least eighteen point stating "IMPORTANT NOTICE TO (name of taxing district) TAXPAYERS". The proposed percentage increase must be printed in a boldface type size no less than two points less than the heading, while the remaining portion of the advertisement must be printed in a type face size no less than four points less than the heading. The text of the notice must contain:
  - a. The date, time, and place of the public hearing.
  - b. A statement that the public hearing will be held to consider increasing the property tax levy by a stated percentage, expressed as a percentage increase exceeding the zero increase number of mills.
  - c. A statement that there will be an opportunity for citizens to present oral or written comments regarding the property tax levy.
  - d. Any other information the taxing district wishes to provide to inform taxpayers.
2. If the governing body of the taxing district does not make a final decision on imposing a property tax levy exceeding the zero increase number of mills at the public hearing required by this section, the governing body shall announce at that public hearing the scheduled time and place of the next public meeting at which the governing body will consider final adoption of a property tax levy exceeding the tax district's zero increase number of mills.
3. For purposes of this section:

- a. "New growth" means the taxable valuation of any property that was not taxable in the prior year.
- b. "Property tax levy" means the tax rate, expressed in mills, for all property taxes levied by the taxing district.
- c. "Taxing district" means a city, county, school district, or city park district but does not include any such taxing district that levied a property tax levy of less than one hundred thousand dollars for the prior year and sets a budget for the current year calling for a property tax levy of less than one hundred thousand dollars.
- d. "Zero increase number of mills" means the number of mills against the taxing district's current year taxable valuation, excluding consideration of new growth, which will provide the same amount of property tax revenue as the property tax levy in the prior year.

Approved April 27, 2011  
Filed April 27, 2011

## CHAPTER 452

### HOUSE BILL NO. 1225

(Representatives J. Nelson, Kretschmar, S. Meyer)  
(Senators Wanzek, Heckaman)

AN ACT to amend and reenact subsection 22 of section 57-15-06.7 and section 57-15-28 of the North Dakota Century Code, relating to the county emergency fund and levy limitation; to provide for a legislative management study; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Subsection 22 of section 57-15-06.7 of the North Dakota Century Code is amended and reenacted as follows:

22. 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.

**SECTION 2. AMENDMENT.** Section 57-15-28 of the North Dakota Century Code is amended and reenacted as follows:

#### **57-15-28. Emergency fund - County.**

The governing body of any county may levy a tax for emergency purposes not exceeding the limitation in subsection 22 of section 57-15-06.7. The emergency fund may not be considered in determining the budget or the amount to be levied for each fiscal year for normal tax purposes but must be shown in the budget as an "emergency fund" and may not be deducted from the budget as otherwise provided by law. Each county may create an emergency fund, and all taxes levied for emergency purposes by any county, when collected, must be deposited in the emergency fund, and must be used only for emergency purposes caused by the destruction or impairment of any county property necessary for the conduct of the affairs of the county, emergencies caused by nature or by the entry by a court of competent jurisdiction of a judgment for damages against the county. The emergency fund may not be used for the purchase of road equipment. The emergency fund may not be used for any road construction or maintenance, except for repair of roads damaged by nature within sixty days preceding the determination to expend emergency funds ~~or for the purchase of road equipment~~; however, the emergency fund may be used to match federal funds appropriated to mitigate damage to roads related to a federally declared disaster that occurred more than sixty days preceding the determination. Any unexpended balance remaining in the emergency fund at the end of any fiscal year must be kept in the fund. When the amount of money in the emergency fund, plus the amount of money due the fund from outstanding taxes, equals the amount produced by a levy of five mills on the taxable valuation of property in a county with a population of thirty thousand or more, ten mills on the taxable valuation of property in a county with a population of less than thirty thousand but more than five thousand, or fifteen mills on the taxable valuation of property in a county with a population of five thousand or fewer, the levy authorized by this section

must be discontinued, and no further levy may be made until required to replenish the emergency fund.

**SECTION 3. LEGISLATIVE MANAGEMENT STUDY - COUNTY AND CITY EMERGENCY FUND LEVIES.** During the 2011-12 interim, the legislative management shall consider studying county and city emergency fund levies and expenditures and jurisdictional responsibilities and issues relating to emergency fund levies and expenditures. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

**SECTION 4. EFFECTIVE DATE.** Section 1 of this Act is effective for taxable years beginning after December 31, 2010. Section 2 of this Act is effective for emergency fund expenditures after July 31, 2011.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 453

### SENATE BILL NO. 2242

(Senators Grindberg, Krebsbach, Robinson)  
(Representatives Devlin, Kreidt, J. Nelson)

AN ACT to amend and reenact subsection 5 of section 57-15-56 and section 57-39.2-26.2 of the North Dakota Century Code, relating to a matching grant from the senior citizen services and programs fund to counties and the mill levy for senior citizen services and programs; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Subsection 5 of section 57-15-56 of the North Dakota Century Code is amended and reenacted as follows:

5. The state treasurer shall provide matching funds as provided in this subsection for counties for senior citizen services and programs funded as required by this section. The grants must be made on or before March first of each year to each eligible county. A county receiving a grant under this section which has not levied a tax under this section shall transfer the amount received to a city within the county which has levied a tax under this section. A grant may not be made to any county that has not filed with the state treasurer a written report verifying that grant funds received in the previous year under this subsection have been budgeted for the same purposes permitted for the expenditure of proceeds of a tax levied under this section. The written report must be received by the state treasurer on or before February first of each year following a year in which the reporting county received grant funds under this subsection. A matching fund grant must be provided from the senior citizen services and programs fund to each eligible county equal to ~~two-thirds~~three-fourths of the amount levied in dollars in the county under this section for the taxable year, but the matching fund grant applies only to a levy of up to one mill under this section.

~~It is the intent of the legislative assembly that counties or cities allocate an amount equal to one third of one mill of property tax revenue from their funds raised or received under section 57-15-06, 57-15-08, or 57-39.2-26.1, or any combination of those fund sources, for senior citizen services and programs for each taxable year. A continuing appropriation of state matching funds and expectation of a local matching fund effort is initiated because of the anticipated increase in state aid distribution fund allocations, with the intent of stabilizing matching funds for senior citizen services and programs at a funding level of one mill for all participating counties. A county is not required to provide the one third of one mill matching funds if the county program can be covered with the funding from the state and the levy under this section in the county. It is also anticipated that this change in funding will allow reduction of mill levies under this section in some counties, which will allow allocation of unused amounts under section 57-39.2-26.2 among counties levying the statutory maximum amount for taxable year 2004.~~



**SECTION 2. AMENDMENT.** Section 57-39.2-26.2 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.2-26.2. Allocation of revenues to senior citizen services and programs matching fund - Continuing appropriation.**

Notwithstanding any other provision of law, a portion of sales, use, and motor vehicle excise tax collections equal to the amount of revenue that would have been generated by a levy of ~~two-thirds~~three-fourths of one mill on the taxable valuation of all property in the state subject to a levy under section 57-15-56 in the previous taxable year must be deposited by the state treasurer in the senior citizen services and programs fund during the period from July first through December thirty-first of each year. The state tax commissioner shall certify to the state treasurer the portion of sales, use, and motor vehicle excise tax revenues which must be deposited in the fund as determined under this section. Revenues deposited in the senior citizen services and programs fund are provided as a standing and continuing appropriation for allocation as provided in subsection 5 of section 57-15-56. Any unexpended and unobligated amount in the senior citizen services and programs fund at the end of ~~the 2005-07 biennium~~ must be allocated among counties that levied the statutory maximum mill levy for taxable year 2004 in proportion to the dollars generated by those levies in those counties for that year but the allocation to any county may not exceed the difference between combined funding for the county's senior citizen services and programs for taxable year 2004 and the combined funding for those services and programs for taxable year 2006 and any remaining unexpended and unobligated amount at the end of any biennium must be transferred by the state treasurer to the state general fund.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2010.

Approved April 20, 2011  
Filed April 20, 2011

## CHAPTER 454

### HOUSE BILL NO. 1100

(Political Subdivisions Committee)  
(At the request of the Office of Management and Budget)

AN ACT to amend and reenact section 57-22-11 of the North Dakota Century Code, relating to certification of uncollectible taxes to the director of the office of management and budget.

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

**SECTION 1. AMENDMENT.** Section 57-22-11 of the North Dakota Century Code is amended and reenacted as follows:

##### **57-22-11. Cancellation of uncollectible taxes.**

At its regular meeting in January of each year, the board of county commissioners shall examine the sheriff's report on personal property taxes and compare the same with the tax lists of the auditor and treasurer, and, upon such report, may cancel such taxes as the board is satisfied cannot be collected. The items of tax so canceled must be noted on the tax lists of the treasurer and auditor, ~~and the~~ The auditor forthwith shall make a report to the sheriff of the tax items canceled ~~and also shall certify to the director of the state office of management and budget the amount of state taxes canceled,~~ and the same must be credited to the county.

Approved April 11, 2011  
Filed April 11, 2011

## CHAPTER 455

### SENATE BILL NO. 2263

(Senator Cook)

AN ACT to amend and reenact sections 57-33.2-06 and 57-33.2-07 and subsection 3 of section 57-33.2-19 of the North Dakota Century Code, relating to reporting dates and allocation for electric generation, distribution, and transmission taxes; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 57-33.2-06 of the North Dakota Century Code is amended and reenacted as follows:

##### **57-33.2-06. Transmission and distribution line location reports to county auditors.**

By ~~May first~~April fifteenth of each year, each transmission or distribution company shall file, with the county auditor of each county in which any of its transmission or distribution line is located, 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 section 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 section must be prepared to distinguish transmission lines from distribution lines. By ~~April~~February first of each year, the county auditor shall provide each transmission or distribution company having a transmission or distribution line in the county with an accurate map of the county showing the boundaries of each taxing district in the county.

**SECTION 2. 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 commissioner.**

By ~~May~~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 commissioner on a form prescribed by the commissioner any and all information required by the commissioner. The form must include a notice of a company's right to appeal its assessment to the state board of equalization before or at the August 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 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.

**SECTION 3. AMENDMENT.** Subsection 3 of section 57-33.2-19 of the North Dakota Century Code is amended and reenacted as follows:

3. a. Revenue from the generation taxes under section 57-33.2-04 must be allocated to the county in which the generator is located. Revenue received by the county under this subsection must be allocated among taxing districts in which the generator is located in proportion to their respective most recent property tax mill rates that apply to the land on which the generator is located.
- b. Revenue from the generation taxes under section 57-33.2-04 from wind farms must be allocated to the county and among taxing districts in which the wind farm and associated collector system, wind generator, or other generation unit is located in proportion to their respective most recent property tax mill rates that apply to the land on which the wind farm is located. For purposes of revenue allocation when generation turbines are located in more than one county or other taxing district, the capacity tax in subdivision a of subsection 1 of section 57-33.2-04 must be based on the capacity of the turbines within each county or taxing district. The electricity output for the kilowatt-hour tax in subdivision b of subsection 1 of section 57-33.2-04 must be allocated according to the proportionate share of wind generation capacity within each county or other taxing district in relation to the total capacity of the wind farm.

**SECTION 4. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2010.

Approved April 26, 2011  
Filed April 26, 2011

## CHAPTER 456

### SENATE BILL NO. 2249

(Senator Olafson)  
(Representative Klemm)

AN ACT to amend and reenact sections 35-20-16, 35-34-04, and 41-09-73, subsection 2 of section 41-09-87, subsection 5 of section 57-34-10, subsection 4 of section 57-36-09.5, section 57-38-49, subsection 4 of section 57-39.2-13, subsection 4 of section 57-40.2-16, subsection 3 of section 57-40.3-07.1, subsection 4 of section 57-43.1-17.4, subsection 4 of section 57-43.2-16.3, subsection 4 of section 57-43.3-22, subsection 2 of section 57-51-11, and subsection 4 of section 57-63-10 of the North Dakota Century Code, relating to the contents of a child support lien filed with the secretary of state, the contents of a vessel lien for the collection of child support, the contents of a financing statement, the filing of a financing statement, a tax lien on a telecommunications carrier, a tax lien for the collection of taxes on tobacco products, a tax lien for the collection of income taxes, a tax lien for the collection of sales tax, a tax lien for the collection of use tax, a tax lien for the collection of motor vehicle excise tax, a tax lien for the collection of motor vehicle fuel tax, a tax lien for the collection of special fuels and importer for use tax; and to declare an effective date.

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

**SECTION 1. AMENDMENT.** Section 35-20-16 of the North Dakota Century Code is amended and reenacted as follows:

#### **35-20-16. Procedure to obtain unpaid earned property or casualty insurance premium lien - Filing.**

The secretary of state shall prescribe a form that can be used to obtain a lien under this section and also be entered in the central indexing system. Any person entitled to an unpaid earned property or casualty insurance premium lien, within ninety days after termination of coverage, shall file in the office of the recorder of the county or counties in which the property covered by the policy is located and with any loss payee named in the policy, a verified statement in writing stating all of the following:

1. The name and address of the policyholder.
2. The name and address of the lienholder.
3. ~~The social security number of the debtor, or in the case of a debtor doing business other than as an individual, the internal revenue service taxpayer identification number of that person.~~
4. The nature and quantity of insurance coverage provided.
- ~~5.~~ 4. The amount of unpaid earned premium.
- ~~6.~~ 5. A description of the property covered by the insurance and subject to the lien.

~~7-6.~~ That a lien is claimed upon the property described.

<sup>146</sup> **SECTION 2. AMENDMENT.** Section 35-34-04 of the North Dakota Century Code is amended and reenacted as follows:

**35-34-04. Vessel lien.**

1. In the case of a vessel, the child support agency may establish a lien by filing a notice of lien with the secretary of state if the value of the vessel is estimated to be at least twice the cost of establishing the lien. The notice must contain a description of the make, model designation, and serial number of the vessel, including its identification or registration number, if any, and the name, ~~social security number,~~ and last-known address of the obligor. The notice of lien must state that the child support obligation is past due and that a copy of the notice of lien has been served on the obligor by first-class mail at the obligor's last-known address.
2. Upon filing of the notice of lien in accordance with this section, the notice of lien must be indexed by the secretary of state in the central indexing system and may be enforced and foreclosed in the same manner as a security agreement under the provisions of title 41.
3. The secretary of state shall remove and destroy the lien notification statement in the same manner as provided for other liens in section 11-18-14 for the recorder.
4. A lien under this section is perfected when notice of the lien is filed with the secretary of state.
5. The child support agency may file an amendment to correct the ~~social security number of the obligor,~~ to correct the spelling of the obligor's name, or to correct or change the address of the obligor.

<sup>147</sup> **SECTION 3. AMENDMENT.** Section 41-09-73 of the North Dakota Century Code is amended and reenacted as follows:

**41-09-73. (9-502) Contents of financing statement - Record of mortgage as financing statement - Time of filing financing statement - Amending financing statement.**

1. Subject to subsection 2, a financing statement is sufficient only if the statement:
  - a. Provides the name of the debtor;
  - b. Provides the name of the secured party or a representative of the secured party;
  - c. Indicates the collateral covered by the financing statement;

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<sup>146</sup> Section 35-34-04 was also amended by section 10 of Senate Bill No. 2258, chapter 251.

<sup>147</sup> Section 41-09-73 was also amended by section 10 of House Bill No. 1137, chapter 304.

- d. If it is a financing statement that is to be filed to gain protection under the central notice system, includes a reasonable description of the property, including the county in which the property is located, and any other additional information required by the Food Security Act of 1985 [Pub. L. 99-198; Stat. 1535; 7 U.S.C. 1631], as prescribed by the secretary of state, and, to be sufficient a financing statement must include ~~the social security number or federal tax identification number of the debtor;~~ the name and address of the secured party; and unless electronically filed, the signatures of the debtor and secured parties;
  - e. ~~Provides the social security number or federal tax identification number of the debtor;~~
  - f. Provides a mailing address for the secured party; and
  - ~~g-f.~~ Provides a mailing address for the debtor.
2. Except as otherwise provided in subsection 2 of section 41-09-72, to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection 1 and also:
    - a. Indicate that it covers this type of collateral;
    - b. Indicate that it is to be filed for record in the real property records;
    - c. Provide a description of the real property to which the collateral is related sufficient to give constructive notice of a mortgage under the law of this state if the description were contained in a record of the mortgage of the real property; and
    - d. If the debtor does not have an interest of record in the real property, provide the name of a record owner.
  3. A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:
    - a. The record indicates the goods or accounts that it covers;
    - b. The goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;
    - c. The record satisfies the requirements for a financing statement in this section other than an indication that it is to be filed in the real property records; and
    - d. The record is duly recorded.
  4. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.
  5. A financing statement filed to gain protection under the central notice system must be amended within three months of a material change to reflect that

change. The amended financing statement must be signed by both the debtor and secured party and filed in the same manner as the original financing statement. An electronically filed amendment does not need to be signed.

6. Any social security number or federal tax identification number submitted ~~under subdivision e of subsection 1 on a financing statement filed pursuant to this chapter~~ as a central indexing filing prior to January 1, 2012, is an exempt record as defined by subsection 5 of section 44-04-17.1 and, ~~for documents submitted after January 1, 2002~~, may not be disclosed as part of any search under section 41-09-94 or 41-09-96 or as part of a copy of the record. ~~After December 31, 2011, a debtor's social security number or federal tax identification number may not be filed only pursuant to this chapter~~ in the filing office with the central indexing system and may not be recorded in the real property records.

<sup>148</sup> **SECTION 4. AMENDMENT.** Subsection 2 of section 41-09-87 of the North Dakota Century Code is amended and reenacted as follows:

2. Filing does not occur with respect to a record that a filing office refuses to accept because:
  - a. The record is not communicated by a method or medium of communication authorized by the filing office;
  - b. An amount equal to or greater than the applicable filing fee is not tendered;
  - c. The filing office is unable to index the record because:
    - (1) In the case of an initial financing statement, the record does not provide a name for the debtor;
    - (2) In the case of an amendment or correction statement, the record:
      - (a) Does not identify the initial financing statement as required by section 41-09-83 or 41-09-89, as applicable; or
      - (b) Identifies an initial financing statement whose effectiveness has lapsed under section 41-09-86;
    - (3) In the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's last name; or
    - (4) In the case of a record filed or recorded in the filing office described in subdivision a of subsection 1 of section 41-09-72, the record does not provide a sufficient description of the real property to which it relates;
  - d. In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

<sup>148</sup> Section 41-09-87 was also amended by section 14 of House Bill No. 1137, chapter 304.



- e. In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:
- (1) Provide a mailing address for the debtor;
  - (2) Indicate whether the debtor is an individual or an organization; or
  - (3) If the financing statement indicates that the debtor is an organization, provide:
    - (a) A type of organization for the debtor;
    - (b) A jurisdiction of organization for the debtor; or
    - (c) An organizational identification number for the debtor or indicate that the debtor has none;
- f. In the case of an assignment reflected in an initial financing statement under subsection 1 of section 41-09-85 or an amendment filed under subsection 2 of section 41-09-85, the record does not provide a name and mailing address for the assignee;
- g. In the case of a continuation statement, the record is not filed within the six-month period prescribed by subsection 4 of section 41-09-86; ~~or~~
- ~~h. The record does not contain the social security number or the federal tax identification number of the debtor.~~

**SECTION 5. AMENDMENT.** Subsection 5 of section 57-34-10 of the North Dakota Century Code is amended and reenacted as follows:

5. Any mortgagee, purchaser, judgment creditor, or lien claimant acquiring any interest in, or lien on, any property situated in the state, prior to the tax commissioner filing in the central indexing system maintained by the secretary of state a notice of the lien provided for in subsection 4, takes free of, or has priority over, the lien. The tax commissioner shall index in the central indexing system the following data:
- a. The name of the taxpayer.
  - b. ~~The tax identification number or social security number of the taxpayer.~~
  - e. The name "State of North Dakota" as claimant.
  - ~~d-c.~~ The date and time the notice of lien was indexed.
  - ~~e-d.~~ The amount of the lien.

The notice of lien is effective as of eight a.m. the next day following the indexing of the notice. The tax commissioner shall index any notice of lien with no payment of fees or costs to the secretary of state.

**SECTION 6. AMENDMENT.** Subsection 4 of section 57-36-09.5 of the North Dakota Century Code is amended and reenacted as follows:

4. The commissioner shall index in the central indexing system the following data:
  - a. The name of the taxpayer.
  - ~~b. The tax identification number or social security number of the taxpayer.~~
  - ~~c. The name "State of North Dakota" as claimant.~~
  - ~~d. The date and time the notice of lien was indexed.~~
  - ~~e. The amount of the lien.~~

The notice of lien is effective as of eight a.m. next day following the indexing of the notice. Any notice of lien filed by the commissioner with a recorder may be indexed in the central indexing system without changing its original priority as to property in the county where the lien was filed.

**SECTION 7. AMENDMENT.** Section 57-38-49 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-49. Preservation of lien.**

Any mortgagee, purchaser, judgment creditor, or lien claimant acquiring any interest in, or lien on, any property situated in the state, prior to the commissioner filing in the central indexing system maintained by the secretary of state a notice of the lien provided for in section 57-38-48, takes free of, or has priority over, the lien. The commissioner shall index in the central indexing system the following data:

1. The name of the taxpayer.
- ~~2. The tax identification number or social security number of the taxpayer.~~
- ~~3. The name "State of North Dakota" as claimant.~~
- ~~4. The date and time the notice of lien was indexed.~~
- ~~5. The amount of the lien.~~

The notice of lien is effective as of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner with a recorder may be indexed in the central indexing system without changing its original priority as to property in the county where the lien was filed. The commissioner shall index any notice of lien with no payment of fees or costs to the secretary of state.

**SECTION 8. AMENDMENT.** Subsection 4 of section 57-39.2-13 of the North Dakota Century Code is amended and reenacted as follows:

4. The commissioner shall index in the central indexing system the following data:
  - a. The name of the taxpayer.
  - ~~b. The tax identification number or social security number of the taxpayer.~~
  - ~~c. The name "State of North Dakota" as claimant.~~

- ~~d-c.~~ The date and time the notice of lien was indexed.
- ~~e-d.~~ The amount of the lien.

The notice of lien is effective as of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner with a recorder may be indexed in the central indexing system without changing its original priority as to property in the county where the lien was filed.

**SECTION 9. AMENDMENT.** Subsection 4 of section 57-40.2-16 of the North Dakota Century Code is amended and reenacted as follows:

4. The commissioner shall index in the central indexing system the following data:
  - a. The name of the taxpayer.
  - b. ~~The tax identification number or social security number of the taxpayer.~~
  - e. The name "State of North Dakota" as claimant.
  - ~~d-c.~~ The date and time the notice of lien was indexed.
  - ~~e-d.~~ The amount of the lien.

The notice of lien is effective as of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner with a recorder may be indexed in the central indexing system without changing its original priority as to property in the county where the lien was filed.

**SECTION 10. AMENDMENT.** Subsection 3 of section 57-40.3-07.1 of the North Dakota Century Code is amended and reenacted as follows:

3. The commissioner shall index in the central indexing system the following data:
  - a. The name of the taxpayer.
  - b. ~~The tax identification number or social security number of the taxpayer.~~
  - e. The name "State of North Dakota" as claimant.
  - ~~d-c.~~ The date and time the notice of lien was indexed.
  - ~~e-d.~~ The amount of the lien.

The notice of lien is effective as of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner with a recorder may be indexed in the central indexing system without changing its original priority as to property in the county where the lien was filed. The commissioner is exempt from the payment of fees otherwise provided by law for the indexing or the satisfaction of the lien.

**SECTION 11. AMENDMENT.** Subsection 4 of section 57-43.1-17.4 of the North Dakota Century Code is amended and reenacted as follows:

4. The commissioner shall index in the central indexing system the following data:
  - a. The name of the taxpayer.
  - b. ~~The tax identification number or social security number of the taxpayer.~~
  - e. The name "State of North Dakota" as claimant.
  - ~~d.c.~~ The date and time the notice of lien was indexed.
  - e.d. The amount of the lien.

The notice of lien is effective as of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner with a recorder may be indexed in the central indexing system without changing its original priority as to property in the county where the lien was filed.

**SECTION 12. AMENDMENT.** Subsection 4 of section 57-43.2-16.3 of the North Dakota Century Code is amended and reenacted as follows:

4. The commissioner shall index in the central indexing system the following data:
  - a. The name of the taxpayer.
  - b. ~~The tax identification number or social security number of the taxpayer.~~
  - e. The name "State of North Dakota" as claimant.
  - ~~d.c.~~ The date and time the notice of lien was indexed.
  - e.d. The amount of the lien.

The notice of lien is effective as of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner with a recorder may be indexed in the central indexing system without changing its original priority as to property in the county where the lien was filed.

**SECTION 13. AMENDMENT.** Subsection 4 of section 57-43.3-22 of the North Dakota Century Code is amended and reenacted as follows:

4. The commissioner shall index in the central indexing system the following data:
  - a. The name of the taxpayer.
  - b. ~~The tax identification number or social security number of the taxpayer.~~
  - e. The name "State of North Dakota" as claimant.
  - ~~d.c.~~ The date and time the notice of lien was indexed.
  - e.d. The amount of the lien.

The notice of lien is effective as of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner with a recorder may be indexed in the central indexing system without changing its original priority as to property in the county where the lien was filed.

**SECTION 14. AMENDMENT.** Subsection 2 of section 57-51-11 of the North Dakota Century Code is amended and reenacted as follows:

2. Any judgment creditor, or lien claimant acquiring any interest in, or lien on, any property situated in this state, prior to the commissioner filing in the central indexing system maintained by the secretary of state, a notice of the lien provided for in this section, takes free of, or has priority over, the lien. The commissioner shall index in the central indexing system the following data:
  - a. The name of the taxpayer.
  - b. ~~The tax identification number or social security number of the taxpayer.~~
  - e. The name "State of North Dakota" as claimant.
  - ~~d.c.~~ The date and time the notice of lien was indexed.
  - ~~e.d.~~ The amount of the lien.

The notice of lien is effective as of eight a.m. of the first day following the indexing of the notice. A notice of lien filed by the commissioner with a recorder before August 1, 1997, may be indexed in the central indexing system without changing its original priority as to property in the county where the lien was filed.

**SECTION 15. AMENDMENT.** Subsection 4 of section 57-63-10 of the North Dakota Century Code is amended and reenacted as follows:

4. The commissioner shall index in the central indexing system the following data:
  - a. The name of the facility.
  - b. ~~The tax identification number of the facility or social security number of the owner, officer, or manager of the facility.~~
  - e. The name "State of North Dakota" as claimant.
  - ~~d.c.~~ The date and time the notice of lien was indexed.
  - ~~e.d.~~ The amount of the lien.

The notice of lien is effective as of eight a.m. the next day following the indexing of the notice. A notice of lien filed by the commissioner with the recorder may be indexed in the central indexing system without changing its original priority as to property in the county where the lien was filed.

**SECTION 16. EFFECTIVE DATE.** This Act becomes effective January 1, 2012.

## CHAPTER 457

### HOUSE BILL NO. 1047

(Legislative Management)  
(Taxation Committee)

AN ACT to amend and reenact sections 57-15-01.1, 57-35.3-03, 57-35.3-05, 57-35.3-07, 57-35.3-08, and 57-38-30, subsection 1 of section 57-38-30.3, and sections 57-64-01, 57-64-02, 57-64-03, and 57-64-04 of the North Dakota Century Code and section 13 of chapter 520 of the 2007 Session Laws, relating to reduction of the rate of the financial institutions tax and adjustment of the allocation of the tax, a reduction in income tax rates for corporations, individuals, estates, and trusts, and allocation of state funding to school districts for mill levy reduction grants and property tax levies of school districts; to repeal chapter 57-16 of the North Dakota Century Code, relating to certain excess levies of school districts; to provide an appropriation; to provide for a transfer; to provide for legislative management studies; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 57-15-01.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **57-15-01.1. Protection of taxpayers and taxing districts.**

Each taxing district may levy the lesser of the amount in dollars as certified in the budget of the governing body, or the amount in dollars as allowed in this section, subject to the following:

1. No taxing district may levy more taxes expressed in dollars than the amounts allowed by this section.
2. For purposes of this section:
  - a. "Base year" means the taxing district's taxable year with the highest amount levied in dollars in property taxes of the three taxable years immediately preceding the budget year. For a park district general fund, the "amount levied in dollars in property taxes" is the sum of amounts levied in dollars in property taxes for the general fund under section 57-15-12 including any additional levy approved by the electors, the insurance reserve fund under section 32-12.1-08, the employee health care program under section 40-49-12, the public recreation system under section 40-55-09 including any additional levy approved by the electors, forestry purposes under section 57-15-12.1 except any additional levy approved by the electors, pest control under section 4-33-11, and handicapped person programs and activities under section 57-15-60;
  - b. "Budget year" means the taxing district's year for which the levy is being determined under this section;
  - c. "Calculated mill rate" means the mill rate that results from dividing the base year taxes levied by the sum of the taxable value of the taxable

- property in the base year plus the taxable value of the property exempt by local discretion or charitable status, calculated in the same manner as the taxable property; and
- d. "Property exempt by local discretion or charitable status" means property exempted from taxation as new or expanding businesses under chapter 40-57.1; improvements to property under chapter 57-02.2; or buildings belonging to institutions of public charity, new single-family residential or townhouse or condominium property, property used for early childhood services, or pollution abatement improvements under section 57-02-08.
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. Increased, for a school district determining its levy limitation under this section, by the amount the school district's mill levy reduction grant under section 57-64-02 for the base year exceeds the amount of the school district's mill levy reduction grant under section 57-64-02 for the budget year.
    - e. Reduced for a school district determining its levy limitation under this section, by the amount the school district's mill levy reduction grant under section 57-64-02 for the budget year exceeds the amount of the school district's mill levy reduction grant under section 57-64-02 for the base year.
  4. In addition to any other levy limitation factor under this section, a taxing district may increase its levy in dollars to reflect new or increased mill levies authorized by the legislative assembly or authorized by the electors of the taxing district.

5. Under this section a taxing district may supersede any applicable mill levy limitations otherwise provided by law, or a taxing district may levy up to the mill levy limitations otherwise provided by law without reference to this section, but the provisions of this section do not apply to the following:
  - a. Any irrevocable tax to pay bonded indebtedness levied pursuant to section 16 of article X of the Constitution of North Dakota.
  - b. The one-mill levy for the state medical center authorized by section 10 of article X of the Constitution of North Dakota.
6. A school district choosing to determine its levy authority under this section may apply subsection 3 only to the amount in dollars levied for general fund purposes under section 57-15-14 or, if the levy in the base year included separate general fund and special fund levies under sections 57-15-14 and 57-15-14.2, the school district may apply subsection 3 to the total amount levied in dollars in the base year for both the general fund and special fund accounts. School district levies under any section other than section 57-15-14 may be made within applicable limitations but those levies are not subject to subsection 3.
7. Optional levies under this section may be used by any city or county that has adopted a home rule charter unless the provisions of the charter supersede state laws related to property tax levy limitations.

**SECTION 2. AMENDMENT.** Section 57-35.3-03 of the North Dakota Century Code is amended and reenacted as follows:

**57-35.3-03. Imposition and basis of tax.**

An annual tax is imposed upon each financial institution for the grant to it of the privilege of transacting, or for the actual transacting by it, of business within this state during any part of each tax year. The tax is based upon and measured by the taxable income of the financial institution for the calendar year. The rate of tax is ~~seven~~ six and one-half percent of taxable income, but the amount of tax may not be less than fifty dollars.

<sup>149</sup> **SECTION 3. AMENDMENT.** Section 57-35.3-05 of the North Dakota Century Code is amended and reenacted as follows:

**57-35.3-05. Credits.**

1. a. There is allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12 in an amount equal to fifty percent of the aggregate amount of charitable contributions made by the taxpayer during the taxable 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 subdivision for any taxable year may not exceed ~~five and seven tenths~~ four and six tenths percent of the tax before credits allowed under this section, or two thousand five hundred dollars, whichever is less.

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<sup>149</sup> Section 57-35.3-05 was amended by section 1 of Senate Bill No. 2160, chapter 458, section 4 of Senate Bill No. 2210, chapter 398, and section 1 of House Bill No. 1124, chapter 459.



- b. There is allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12 in an amount equal to fifty percent of the aggregate amount of charitable contributions made by the taxpayer during the taxable year to nonprofit private institutions of secondary education located within the state. The amount allowable as a credit under this subdivision for any taxable year may not exceed ~~five and seven tenths~~four and six tenths percent of the tax before credits allowed under this section, or two thousand five hundred dollars, whichever is less.
  - c. For the purposes of this subsection, the term "nonprofit private institution of higher education" means only a nonprofit private educational institution located in North Dakota which normally maintains a regular faculty and curriculum and 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 department of public instruction and 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 twelfth grades.
  - d. For the purposes of this subsection, 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 for filing the return for the taxable year.
2. a. There is allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12 in an amount equal to any overpayment of tax paid pursuant to chapter 57-35 or 57-35.1, for a taxable year beginning before January 1, 1997, to the extent that the overpayment would have been an allowable deduction from tax payable for the current taxable year, under section 57-35-12 or 57-35.1-07, if chapters 57-35 and 57-35.1 applied to the current taxable year. The amount allowable as a credit under this subsection for any taxable year may not exceed five-sevenths of the tax before credits allowed under this section.
- b. For purposes of determining distributions to and from the counties under section 57-35.3-09:
    - (1) The balance in the financial institution tax distribution fund and the amount of the payment received by each county from the state shall be determined as if any credit allowed under subdivision a had not been claimed and the full amount of the tax otherwise due had been timely paid;
    - (2) The credited amount must be deducted from the distributions that would otherwise be made to and from the county that received the tax overpayment until the sum of the deductions equals the credit; and
    - (3) The deductions from distributions made by a county to each distributee must be proportionate to the overpayment of tax received by each distributee.

3. There is allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12 in an amount equal to fifty percent of the aggregate amount of contributions made by the taxpayer during the taxable year for tuition scholarships for participation in rural leadership North Dakota conducted through the North Dakota state university extension service. Contributions by a taxpayer may be earmarked for use by a designated recipient. The amount allowable as a credit under this subsection for any taxable year may not exceed ~~five and seven tenths~~ four and six tenths percent of the tax before credits allowed under this section, or two thousand five hundred dollars, whichever is less.

<sup>150</sup> **SECTION 4. AMENDMENT.** Section 57-35.3-07 of the North Dakota Century Code is amended and reenacted as follows:

**57-35.3-07. Payment of tax.**

~~Two sevenths~~ Three thirteenths of the tax before credits allowed under section 57-35.3-05, less the credit allowed under subsection 1 of section 57-35.3-05, must be paid to the commissioner on or before April fifteenth of the year in which the return is due, regardless of any extension of the time for filing the return granted under section 57-35.3-06. ~~Five sevenths~~ Ten thirteenths of the tax before credits allowed under section 57-35.3-05, less the credit allowed under subsection 2 of section 57-35.3-05, must be paid to the commissioner on or before January fifteenth of the year after the return is due. Payment must be made by check, draft, or money order, payable to the commissioner, or as prescribed by the commissioner under subsection 15 of section 57-01-02.

**SECTION 5. AMENDMENT.** Section 57-35.3-08 of the North Dakota Century Code is amended and reenacted as follows:

**57-35.3-08. Disposition of tax.**

The commissioner shall deposit the portion of the tax payable in the year the return is due in the general fund of the state treasury and shall deposit the portion of the tax payable in the year after the return is due in the financial institution tax distribution fund of the state treasury, ~~which is hereby created~~. Interest, penalty, and late tax payments attributable to each portion of the tax must be deposited in the appropriate fund.

<sup>151</sup> **SECTION 6. AMENDMENT.** Section 57-38-30 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-30. Imposition and rate of tax on corporations.**

A tax is hereby imposed upon the taxable income of every domestic and foreign corporation which must be levied, collected, and paid annually as in this chapter provided:

1. a. For the first twenty-five thousand dollars of taxable income, at the rate of ~~two one and one tenths~~ sixty-eight hundredths percent.

<sup>150</sup> Section 57-35.3-07 was also amended by section 2 of House Bill No. 1124, chapter 459, section 2 of Senate Bill No. 2160, chapter 458, and section 5 of Senate Bill No. 2210, chapter 398.

<sup>151</sup> Section 57-38-30 was also amended by section 9 of House Bill No. 1039, chapter 54.

- b. On all taxable income exceeding twenty-five thousand dollars and not exceeding fifty thousand dollars, at the rate of ~~five~~four and ~~twenty-five~~twenty-three hundredths percent.
- c. On all taxable income exceeding fifty thousand dollars, at the rate of ~~six~~five and ~~four~~tenths~~fifteen~~hundredths percent.
2. A corporation that has paid North Dakota alternative minimum tax in years beginning before January 1, 1991, may carry over any alternative minimum tax credit remaining to the extent of the regular income tax liability of the corporation for a period not to exceed four taxable years.

<sup>152</sup> **SECTION 7. AMENDMENT.** Subsection 1 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

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

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

If North Dakota taxable income is:	The tax is equal to:
Not over <del>\$33,950</del> <u>\$34,500</u>	<del>1.84%</del> <u>1.51%</u>
Over <del>\$33,950</del> <u>\$34,500</u>	<del>\$624.68</del> <u>\$520.95</u> plus <del>3.44%</del> <u>2.82%</u>
but not over <del>\$82,250</del> <u>\$83,600</u>	of amount over <del>\$33,950</del> <u>\$34,500</u>
Over <del>\$82,250</del> <u>\$83,600</u>	<del>\$2,286.20</del> <u>\$1,905.57</u> plus <del>3.84%</del> <u>3.13%</u>
but not over <del>\$174,550</del> <u>\$174,400</u>	of amount over <del>\$82,250</del> <u>\$83,600</u>
Over <del>\$174,550</del> <u>\$174,400</u>	<del>\$5,688.53</del> <u>\$4,747.61</u> plus <del>4.42%</del> <u>3.63%</u>
but not over <del>\$372,950</del> <u>\$379,150</u>	of amount over <del>\$174,550</del> <u>\$174,400</u>
Over <del>\$372,950</del> <u>\$379,150</u>	<del>\$14,590.44</del> <u>\$12,180.04</u> plus <del>4.86%</del> <u>3.99%</u>
	of amount over <del>\$372,950</del> <u>\$379,150</u>

- b. Married filing jointly and surviving spouse.

If North Dakota taxable income is:	The tax is equal to:
Not over <del>\$56,750</del> <u>\$57,700</u>	<del>1.84%</del> <u>1.51%</u>
Over <del>\$56,750</del> <u>\$57,700</u>	<del>\$1,044.20</del> <u>\$871.27</u> plus <del>3.44%</del> <u>2.82%</u>
but not over <del>\$137,050</del> <u>\$139,350</u>	of amount over <del>\$56,750</del> <u>\$57,700</u>

<sup>152</sup> Section 57-38-30.3 was also amended by section 1 of House Bill No. 1072, chapter 462, section 13 of Senate Bill No. 2057, chapter 50, section 7 of Senate Bill No. 2210, chapter 398, section 8 of House Bill No. 1124, chapter 459, section 10 of Senate Bill No. 2034, chapter 460, and section 1 of Senate Bill No. 2208, chapter 463.

Over <u>\$137,050</u> <u>\$139,350</u>	<u>\$3,806.52</u> <u>\$3,173.80</u> plus 3.81% <u>3.13%</u>
but not over <u>\$208,850</u> <u>\$212,300</u>	of amount over <u>\$137,050</u> <u>\$139,350</u>
Over <u>\$208,850</u> <u>\$212,300</u>	<u>\$6,542.10</u> <u>\$5,457.14</u> plus 4.42% <u>3.63%</u>
but not over <u>\$372,950</u> <u>\$379,150</u>	of amount over <u>\$208,850</u> <u>\$212,300</u>
Over <u>\$372,950</u> <u>\$379,150</u>	<u>\$13,795.32</u> <u>\$11,513.79</u> plus 4.86% <u>3.99%</u>
	of amount over <u>\$372,950</u> <u>\$379,150</u>

c. Married filing separately.

If North Dakota taxable income is:	The tax is equal to: Not over
<u>\$28,375</u> <u>\$28,850</u>	<u>1.84%</u> <u>1.51%</u>
Over <u>\$28,375</u> <u>\$28,850</u>	<u>\$522.10</u> <u>\$435.64</u> plus 3.44% <u>2.82%</u>
but not over <u>\$68,525</u> <u>\$69,675</u>	of amount over <u>\$28,375</u> <u>\$28,850</u>
Over <u>\$68,525</u> <u>\$69,675</u>	<u>\$1,903.26</u> <u>\$1,586.90</u> plus 3.81% <u>3.13%</u>
but not over <u>\$104,425</u> <u>\$106,150</u>	of amount over <u>\$68,525</u> <u>\$69,675</u>
Over <u>\$104,425</u> <u>\$106,150</u>	<u>\$3,271.05</u> <u>\$2,728.57</u> plus 4.42% <u>3.63%</u>
but not over <u>\$186,475</u> <u>\$189,575</u>	of amount over <u>\$104,425</u> <u>\$106,150</u>
Over <u>\$186,475</u> <u>\$189,575</u>	<u>\$6,897.66</u> <u>\$5,756.90</u> plus 4.86% <u>3.99%</u>
	of amount over <u>\$186,475</u> <u>\$189,575</u>

d. Head of household.

If North Dakota taxable income is:	The tax is equal to:
Not over <u>\$45,500</u> <u>\$46,250</u>	<u>1.84%</u> <u>1.51%</u>
Over <u>\$45,500</u> <u>\$46,250</u>	<u>\$837.20</u> <u>\$698.38</u> plus 3.44% <u>2.82%</u>
but not over <u>\$117,450</u> <u>\$119,400</u>	of amount over <u>\$45,500</u> <u>\$46,250</u>
Over <u>\$117,450</u> <u>\$119,400</u>	<u>\$3,312.28</u> <u>\$2,761.21</u> plus 3.81% <u>3.13%</u>
but not over <u>\$190,200</u> <u>\$193,350</u>	of amount over <u>\$117,450</u> <u>\$119,400</u>
Over <u>\$190,200</u> <u>\$193,350</u>	<u>\$6,084.06</u> <u>\$5,075.84</u> plus 4.42% <u>3.63%</u>
but not over <u>\$372,950</u> <u>\$379,150</u>	of amount over <u>\$190,200</u> <u>\$193,350</u>
Over <u>\$372,950</u> <u>\$379,150</u>	<u>\$14,161.64</u> <u>\$11,820.38</u> plus 4.86% <u>3.99%</u>
	of amount over <u>\$372,950</u> <u>\$379,150</u>

e. Estates and trusts.

If North Dakota taxable income is:	The tax is equal to:
Not over \$2,300	<u>1.84%</u> <u>1.51%</u>
Over \$2,300	<u>\$42.32</u> <u>\$34.73</u> plus 3.44% <u>2.82%</u>
but not over <u>\$5,350</u> <u>\$5,450</u>	of amount over \$2,300
Over <u>\$5,350</u> <u>\$5,450</u>	<u>\$147.24</u> <u>\$123.56</u> plus 3.81% <u>3.13%</u>
but not over <u>\$8,200</u> <u>\$8,300</u>	of amount over <u>\$5,350</u> <u>\$5,450</u>
Over <u>\$8,200</u> <u>\$8,300</u>	<u>\$255.83</u> <u>\$212.77</u> plus 4.42% <u>3.63%</u>
but not over <u>\$11,450</u> <u>\$11,350</u>	of amount over <u>\$8,200</u> <u>\$8,300</u>
Over <u>\$11,450</u> <u>\$11,350</u>	<u>\$386.22</u> <u>\$323.48</u> plus 4.86% <u>3.99%</u>
	of amount over <u>\$11,450</u> <u>\$11,350</u>

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

- (1) The numerator is the federal adjusted gross income allocable and apportionable to this state; and

- (2) The denominator is the federal adjusted gross income from all sources reduced by the net income from the amounts specified in subdivisions a and b of subsection 2.

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

- g. ~~For taxable years beginning after December 31, 2009, the~~The tax commissioner shall prescribe new rate schedules that apply in lieu of the schedules set forth in subdivisions a through e. The new schedules must be determined by increasing the minimum and maximum dollar amounts for each income bracket for which a tax is imposed by the cost-of-living adjustment for the taxable year as determined by the secretary of the United States treasury for purposes of section 1(f) of the United States Internal Revenue Code of 1954, as amended. For this purpose, the rate applicable to each income bracket may not be changed, and the manner of applying the cost-of-living adjustment must be the same as that used for adjusting the income brackets for federal income tax purposes.
- h. The tax commissioner shall prescribe an optional simplified method of computing tax under this section that may be used by an individual taxpayer who is not entitled to claim an adjustment under subsection 2 or credit against income tax liability under subsection 7.

**SECTION 8. AMENDMENT.** Section 57-64-01 of the North Dakota Century Code is amended and reenacted as follows:

**57-64-01. Definitions.**

For purposes of this chapter:

1. "Combined education mill rate" means the combined number of mills levied by a school district for the general fund, high school tuition, and high school transportation.
2. "Qualifying school district" means a school district that meets the conditions and requirements of this chapter to receive a mill levy reduction grant.
3. ~~"Weighted student unit" means weighted student unit as determined for the school district under chapter 15.1-27.~~

**SECTION 9. AMENDMENT.** Section 57-64-02 of the North Dakota Century Code is amended and reenacted as follows:

**57-64-02. Mill levy reduction allocation and grant.**

Each qualifying school district in the state is entitled to a mill levy reduction allocation and grant as provided in this chapter, subject to legislative appropriation to the superintendent of public instruction.

1. The mill levy reduction allocation rate for each qualifying school district is equal to the payments to the school district based on the per student payment rate as determined for the school year under chapter 15.1-27.

2. The grant to a qualifying school district may not exceed the smallest of:
  - a. The allocation determined under subsection 1;
  - b. The taxable valuation of property in the school district in the previous taxable year times the number of mills determined by subtracting one hundred mills from the combined education mill rate of the school district for taxable year 2008; or
  - c. The taxable valuation of property in the school district in the previous taxable year times seventy-five mills.
3. The grant to a qualifying school district may not be less than the grant to that school district in the preceding school year.
4. The grant to a qualifying school district may not exceed the grant to that school district in the preceding school year by a percentage that is more than the percentage increase in statewide taxable valuation which was determined for the previous taxable year.
5. For purposes of this section, "taxable valuation" means the valuation to which the mill rate is applied to determine the amount of ad valorem taxes or payments in lieu of taxes, and includes taxable valuation determined for agricultural, residential, and commercial property; gas company property, pipeline property, power company property, and railroad property assessed by the state board of equalization under chapter 57-06; mobile homes under chapter 57-55; land controlled by the game and fish department subject to valuation under chapter 57-02.1; land owned by the board of university and school lands or the state treasurer subject to valuation under chapter 57-02.3; national guard land subject to valuation under chapter 37-07.3; farmland or ranchland owned by nonprofit organizations for conservation purposes subject to valuation under section 10-06.1-10; land acquired by the state water commission for the Devils Lake project subject to valuation under chapter 61-02; a workforce safety and insurance building and associated real property subject to valuation under section 65-02-32; and carbon dioxide pipeline property subject to valuation under section 57-06-17.2. For purposes of this section, "taxable valuation" includes the taxable valuation of the homestead credit reimbursed by the state under section 57-02-08.2 and the disabled veterans' credit reimbursed by the state under section 57-02-08.8.
- 4-6. The superintendent of public instruction shall report to each qualifying school district by July fifteenth of each year the mill levy reduction grant in dollars available to that school district during the upcoming school year.
- 5-7. By December first, January first, February first, and March first of each school year, the superintendent of public instruction shall forward to each qualifying school district installments equal to twenty-five percent of the total mill levy reduction grant the district is eligible to receive during that school year.
- 6-8. Allocations to a school district under this chapter are not considered per student payments or state aid for purposes of chapter 15.1-27.
- 7-9. For all purposes under law relating to allocation of funds among political subdivisions based on property tax levies, property taxes levied by a school

district are the amount that would have been levied without the mill reduction grant provided to the school district under this chapter.

**SECTION 10. AMENDMENT.** Section 57-64-03 of the North Dakota Century Code is amended and reenacted as follows:

**57-64-03. School district levy compliance.**

1. To be eligible to receive a grant under this chapter, a qualifying school district must establish a spending level that does not result in a general fund mill rate exceeding one hundred ten mills. The certificate of levy form filed with the county auditor by a qualifying school district must reflect the revenue to be received by the school district under this chapter and that the general fund mill rate for the school district will not exceed one hundred ten mills unless:
  - a. The district has approval of a majority of the electors of the school district for a higher levy;
  - b. The higher levy is the result of a school district reorganization in compliance with chapter 15.1-12; ~~or~~
  - c. The higher levy does not produce an amount in dollars exceeding the amount allowed under section 57-15-01.1 ~~for taxable year 2008~~ reduced by the amount of the school district's mill levy reduction grant under section 57-64-02 for the budget year; or
  - d. The district has authority for a higher levy under subdivision b of subsection 2.
2. The authority under subdivision a or b of subsection 1 for a school district to levy a general fund mill rate exceeding one hundred ten mills applies for not more than ten taxable years at a time after taxable year 2008 unless a majority of the electors of the school district approve an extension of that authority. Approval by electors of extension of levy authority under subdivision a or b of subsection 1 is effective for not more than ten taxable years at a time. A ballot measure for approval by electors of extension of levy authority under subdivision a or b of subsection 1 is subject to the following:
  - a. The ballot measure must specify the number of mills for the general fund mill rate for which approval is sought.
  - b. If a ballot measure for approval of extension of levy authority ~~to levy a specific number of mills under this subsection~~ is not approved by a majority of the electors of the school district voting on the question, the school district general fund levy limitation for subsequent years is subject to the limitations as determined for the school district's budget year under section 57-15-01.1 or 57-15-14, whichever produces the higher levy limitation.

**SECTION 11. AMENDMENT.** Section 57-64-04 of the North Dakota Century Code is amended and reenacted as follows:

**57-64-04. Levy reduction priority.**

In setting mill rates for qualified school districts, the county auditor shall apply funds allocated to a school district under this chapter for mill levy reduction first to reduce the number of mills levied for general fund purposes and, if allocation funds

remain after the general fund mill rate is reduced to zero, the balance must be applied to reduce the high school tuition levy and, if allocation funds remain after the high school tuition levy mill rate is reduced to zero, then to reduce the high school transportation levy of the qualified school district.

**SECTION 12. REPEAL.** Chapter 57-16 of the North Dakota Century Code is repealed.

**SECTION 13. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$341,790,000, or so much of the sum as may be necessary, to the superintendent of public instruction for the purpose of allocation of mill levy reduction grants to school districts under chapter 57-64, for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 14. TRANSFER - PROPERTY TAX RELIEF SUSTAINABILITY FUND - GENERAL FUND.** The office of management and budget shall transfer the sum of \$295,000,000 from the property tax relief sustainability fund to the general fund on July 1, 2011.

**SECTION 15. AMENDMENT.** Section 13 of chapter 520 of the 2007 Session Laws is amended and reenacted as follows:

**SECTION 13. LEGISLATIVE COUNCIL MANAGEMENT STUDY.** The legislative ~~council management~~ shall study in each interim through 2012 the feasibility and desirability of property tax reform and providing property tax relief to taxpayers of the state, with the goal of reduction of each taxpayer's annual property tax bill to an amount that is not more than one and one-half percent of the true and full value of property, and including examination of the proper measure of education funding from local taxation and state resources and the variability of funding resources among taxing districts and examination of improved collection and reporting of property tax information to identify residency of property owners with minimized administrative difficulty. The legislative management shall consider the sustainability of state-funded property tax relief in view of the compounding effect of ongoing property taxable valuation increases. The legislative ~~council management~~ shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the legislative assembly subsequent to each interim.

**SECTION 16. LEGISLATIVE MANAGEMENT STUDY - FINANCIAL INSTITUTIONS AND CORPORATE INCOME TAXATION.** During the 2011-12 interim, the legislative management shall consider studying the feasibility and desirability of revision of the financial institutions taxes, including the feasibility of taxing financial institutions under the state corporate income tax laws. The study under this section must include consideration of corporate income taxes, including corporate income apportionment factors and potential impact of federal legislation on state corporate income taxes. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

**SECTION 17. EFFECTIVE DATE.** Sections 1 through 7 of this Act are effective for taxable years beginning after December 31, 2010. The remainder of this Act is effective July 1, 2011.

Approved April 27, 2011  
Filed April 27, 2011



## CHAPTER 458

### SENATE BILL NO. 2160

(Senators Krebsbach, Flakoll, Mathern)  
(Representatives Sanford, N. Johnson, Streylo)

AN ACT to create and enact subsection 4 to section 57-35.3-05 of the North Dakota Century Code, relating to a financial institutions tax credit for charitable gifts to qualified endowments by financial institutions; to amend and reenact sections 57-35.3-07 and 57-38-01.21 of the North Dakota Century Code, relating to the tax credit for charitable gifts, planned gifts, or endowments; and to provide an effective date.

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

<sup>153</sup> **SECTION 1.** Subsection 4 to section 57-35.3-05 of the North Dakota Century Code is created and enacted as follows:

4. There is allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12 in an amount equal to forty percent of a charitable gift to a qualified endowment. The maximum credit that may be claimed by a financial institution under this subsection for charitable gifts made in a taxable year may not exceed ten thousand dollars. For the purposes of the credit allowed in this subsection, subsections 1, 6, and 8 of section 57-38-01.21 apply. A charitable gift used as the basis for a credit claimed under this subsection may not be used as the basis for the claim of a credit under any other provision of this chapter.

<sup>154</sup> **SECTION 2. AMENDMENT.** Section 57-35.3-07 of the North Dakota Century Code is amended and reenacted as follows:

#### **57-35.3-07. Payment of tax.**

Two-sevenths of the tax before credits allowed under section 57-35.3-05, less the ~~credit~~ credits allowed under ~~subsections~~ subsections 1 and 4 of section 57-35.3-05, must be paid to the commissioner on or before April fifteenth of the year in which the return is due, regardless of any extension of the time for filing the return granted under section 57-35.3-06. Five-sevenths of the tax before credits allowed under section 57-35.3-05, less the credit allowed under subsection 2 of section 57-35.3-05, must be paid to the commissioner on or before January fifteenth of the year after the return is due. Payment must be made by check, draft, or money order, payable to the commissioner, or as prescribed by the commissioner under subsection 15 of section 57-01-02.

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<sup>153</sup> Section 57-35.3-05 was also amended by section 4 of Senate Bill No. 2210, chapter 398, section 3 of House Bill No. 1047, chapter 457, and section 1 of House Bill No. 1124, chapter 459.

<sup>154</sup> Section 57-35.3-07 was also amended by section 4 of House Bill No. 1047, chapter 457, section 2 of House Bill No. 1124, chapter 459, and section 5 of Senate Bill No. 2210, chapter 398.

<sup>155</sup> **SECTION 3. AMENDMENT.** Section 57-38-01.21 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.21. Planned Charitable gifts, planned gifts, and qualified endowments credit - Definitions.**

1. For purposes of this section:

- a. "Permanent, irrevocable fund" means a fund comprising cash, securities, mutual funds, or other investment assets established for a specific charitable, religious, educational, or eleemosynary purpose and invested for the production or growth of income, or both, which may either be added to principal or expended.
- b. "Planned gift" means an irrevocable ~~contribution~~charitable gift to a North Dakota qualified nonprofit organization or qualified endowment held by or for a North Dakota qualified nonprofit organization, when the ~~contribution~~charitable gift uses any of the following techniques that are authorized under the Internal Revenue Code:

- (1) Charitable remainder unitrusts, as defined by 26 U.S.C. 664;
- (2) Charitable remainder annuity trusts, as defined by 26 U.S.C. 664;
- (3) Pooled income fund trusts, as defined by 26 U.S.C. 642(c)(5);
- (4) Charitable lead unitrusts qualifying under 26 U.S.C. 170(f)(2)(B);
- (5) Charitable lead annuity trusts qualifying under 26 U.S.C. 170(f)(2)(B);
- (6) Charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);
- (7) Deferred charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);
- (8) Charitable life estate agreements qualifying under 26 U.S.C. 170(f)(3)(B); or
- (9) Paid-up life insurance policies meeting the requirements of 26 U.S.C. 170.

"Planned gift" does not include a ~~contribution~~charitable gift using a charitable remainder unitrust or charitable remainder annuity trust unless the agreement provides that the trust may not terminate and beneficiaries' interest in the trust may not be assigned or contributed to the qualified endowment sooner than the earlier of the date of death of the beneficiaries or five years from the date of the ~~contribution~~planned gift.

"Planned gift" does not include a deferred charitable gift annuity unless the payment of the annuity is required to begin within the life expectancy of the annuitant or of the joint life expectancies of the annuitants, if more than one annuitant, as determined using the actuarial tables used by the internal revenue service in determining federal charitable income tax deductions on the date of the ~~contribution~~planned gift.

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<sup>155</sup> Section 57-38-01.21 was also amended by section 4 of House Bill No. 1124, chapter 459.

"Planned gift" does not include a charitable gift annuity or deferred charitable gift annuity unless the annuity agreement provides that the interest of the annuitant or annuitants in the gift annuity may not be assigned to the qualified nonprofit organization or qualified endowment sooner than the earlier of the date of death of the annuitant or annuitants or five years after the date of the ~~contribution~~planned gift.

"Planned gift" does not include a charitable gift annuity or deferred charitable gift annuity unless the annuity is a qualified charitable gift annuity for federal income tax purposes.

- c. "Qualified endowment" means a permanent, irrevocable fund held by a North Dakota incorporated or established organization that is:
    - (1) A qualified nonprofit organization; or
    - (2) A bank or trust company holding the fund on behalf of a qualified nonprofit organization.
  - d. "Qualified nonprofit organization" means a North Dakota incorporated or established tax-exempt organization under 26 U.S.C. 501(c) to which contributions qualify for federal charitable income tax deductions with an established business presence or situs in North Dakota.
2.
    - a. An individual is allowed a tax credit against the tax imposed by section 57-38-30.3 in an amount equal to forty percent of the present value of the aggregate amount of the charitable gift portion of planned gifts made by the taxpayer during the taxable year to a qualified nonprofit organization or qualified endowment. The maximum credit that may be claimed under this subsection for ~~contributions~~planned gifts made in a taxable year is ten thousand dollars for an individual, or twenty thousand dollars for married individuals filing a joint return. The credit allowed under this section may not exceed the taxpayer's income tax liability.
    - b. An individual is allowed a tax credit against the tax imposed by section 57-38-30.3 for making a charitable gift to a qualified endowment. The credit is equal to forty percent of the charitable gift. If an individual makes a single charitable gift to a qualified endowment, the charitable gift must be five thousand dollars or more to qualify for the credit. If an individual makes more than one charitable gift to the same qualified endowment, the aggregate amount of the charitable gifts made to that qualified endowment must be five thousand dollars or more to qualify for the credit. The maximum credit that may be claimed under this subsection for charitable gifts made in a taxable year is ten thousand dollars for an individual or twenty thousand dollars for married individuals filing a joint return. The tax credit allowed under this section may not exceed the taxpayer's income tax liability.
  3. A corporation is allowed a tax credit against the tax imposed by section 57-38-30 in an amount equal to forty percent of a charitable gift to a qualified endowment. The maximum credit that may be claimed by a corporation under this subsection for ~~contributions~~charitable gifts made in a taxable year is ten thousand dollars. The credit allowed under this section may not exceed the corporate taxpayer's income tax liability.

4. An estate or trust is allowed a tax credit in an amount equal to forty percent of a charitable gift to a qualified endowment. The maximum credit ~~allowed that may be claimed~~ under this subsection for ~~contributions~~ charitable gifts made in a taxable year is ten thousand dollars. The allowable credit must be apportioned to the estate or trust and to its beneficiaries on the basis of the income of the estate or trust allocable to each, and the beneficiaries may claim their share of the credit against the tax imposed by section 57-38-30 or 57-38-30.3. A beneficiary may claim the credit only in the beneficiary's taxable year in which the taxable year of the estate or trust ends. Subsections 6 and 7 apply to the estate or trust and its beneficiaries with respect to their respective shares of the apportioned credit.
5. A partnership, subchapter S corporation, or limited liability company treated like a partnership is entitled to a credit in an amount equal to forty percent of a charitable gift to a qualified endowment by the entity during the taxable year. The maximum credit ~~allowed to that may be claimed by~~ the entity under this subsection for ~~charitable gifts and planned gifts~~ made in a taxable year is ten thousand dollars. The credit determined at the entity level must be passed through to the partners, shareholders, or members in the same proportion that the charitable contributions attributable to the ~~charitable gifts and planned gifts~~ under this section are distributed to the partners, shareholders, or members. The partner, shareholder, or member may claim the credit only in the partner's, shareholder's, or member's taxable year in which the taxable year of the partnership, subchapter S corporation, or limited liability company ends. Subsections 6 and 7 apply to the partner, shareholder, or member.
6. The amount of the ~~contribution~~ charitable gift upon which an allowable credit is computed must be added to federal taxable income in computing North Dakota taxable income in the taxable year in which the credit is first claimed, but only to the extent that the ~~contribution~~ charitable gift reduced federal taxable income.
7. ~~An~~ The unused portion of a credit under this section may be carried forward for up to three taxable years.
8. If a ~~contribution~~ charitable gift for which a credit was claimed is recovered by the taxpayer, an amount equal to the credit claimed in all taxable years must be added to the tax due on the income tax return filed for the taxable year in which the recovery occurs. For purposes of subsection 4, this subsection applies if the estate or trust recovers the ~~contribution~~ charitable gift and the estate or trust and its beneficiaries are liable for the additional tax due with respect to their respective shares of the apportioned credit. For purposes of subsection 5, this subsection applies if the partnership, subchapter S corporation, or limited liability company recovers the ~~contribution~~ charitable gift, and the partner, shareholder, or member is liable for the additional tax due.
9. A charitable gift used as the basis for a credit claimed under this section may not be used as the basis for the claim of a credit under any other provision of this chapter.

**SECTION 4. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2010.

Approved April 25, 2011  
 Filed April 25, 2011

## CHAPTER 459

### HOUSE BILL NO. 1124

(Finance and Taxation Committee)  
(At the request of the Tax Commissioner)

AN ACT to create and enact a new subsection to section 57-38-01.8 of the North Dakota Century Code, relating to the individual income tax credit for installation of geothermal energy devices; to amend and reenact subsection 3 of section 57-35.3-05, section 57-35.3-07, subsections 1 and 6 of section 57-38-01.21, section 57-38-01.28, subsection 1 of section 57-38-01.31, section 57-38-29.3, subsections 2 and 3 of section 57-38-30.3, sections 57-38-59.2 and 57-38.4-01, and subsection 1 of section 57-38.4-02 of the North Dakota Century Code, relating to the tuition scholarship tax credit for financial institution tax purposes, the tax credit for planned gifts and qualified endowments, the marriage penalty tax credit, the employer tax credit for mobilized employees, the long-term care partnership plan insurance coverage tax credit, the qualified dividend and long-term capital gain income tax exclusion, return filing requirements for individuals, withholding on lottery winnings, and the use of the domestic disclosure spreadsheet for the water's edge method election for reporting income; and to provide an effective date.

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

<sup>156</sup> **SECTION 1. AMENDMENT.** Subsection 3 of section 57-35.3-05 of the North Dakota Century Code is amended and reenacted as follows:

3. There is allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12 in an amount equal to fifty percent of the aggregate amount of contributions made by the taxpayer during the taxable year for tuition scholarships for participation in rural leadership North Dakota conducted through the North Dakota state university extension service. Contributions by a taxpayer may be earmarked for use by a designated recipient. ~~The amount allowable as a credit under this subsection for any taxable year may not exceed five and seven tenths percent of the tax before credits allowed under this section, or two thousand five hundred dollars, whichever is less.~~

<sup>157</sup> **SECTION 2. AMENDMENT.** Section 57-35.3-07 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>156</sup> Section 57-35.3-05 was also amended by section 1 of Senate Bill No. 2160, chapter 458, section 4 of Senate Bill No. 2210, chapter 398, and section 3 of House Bill No. 1047, chapter 457.

<sup>157</sup> Section 57-35.3-07 was also amended by section 4 of House Bill No. 1047, chapter 457, section 2 of Senate Bill No. 2160, chapter 458, and section 5 of Senate Bill No. 2210, chapter 398.

### 57-35.3-07. Payment of tax.

Two-sevenths of the tax before credits allowed under section 57-35.3-05, less the ~~credit~~ credits allowed under ~~subsections~~ subsections 1 and 3 of section 57-35.3-05, must be paid to the tax commissioner on or before April fifteenth of the year in which the return is due, regardless of any extension of the time for filing the return granted under section 57-35.3-06. Five-sevenths of the tax before credits allowed under section 57-35.3-05, less the credit allowed under subsection 2 of section 57-35.3-05, must be paid to the tax commissioner on or before January fifteenth of the year after the return is due. Payment must be made ~~by check, draft, or money order, payable to in the manner prescribed by the tax commissioner, or as prescribed by the commissioner under subsection 15 of section 57-01-02.~~

**SECTION 3.** A new subsection to section 57-38-01.8 of the North Dakota Century Code is created and enacted as follows:

An individual taxpayer filing a North Dakota return pursuant to the provisions of this chapter may claim a credit against the tax liability under section 57-38-30.3 for the cost of a geothermal energy device installed after December 31, 2008, and before January 1, 2015, in a building or on property owned or leased by the taxpayer in North Dakota. The credit must be in an amount equal to three percent per year for five years of the actual cost of acquisition and installation of the geothermal energy device.

<sup>158</sup> **SECTION 4. AMENDMENT.** Subsections 1 and 6 of section 57-38-01.21 of the North Dakota Century Code are amended and reenacted as follows:

1. For purposes of this section:
  - a. "Permanent, irrevocable fund" means a fund comprising cash, securities, mutual funds, or other investment assets established for a specific charitable, religious, educational, or eleemosynary purpose and invested for the production or growth of income, or both, which may either be added to principal or expended.
  - b. "Planned gift" means an irrevocable contribution to a North Dakota qualified nonprofit organization or qualified endowment held by or for a North Dakota qualified nonprofit organization, when the contribution uses any of the following techniques that are authorized under the Internal Revenue Code:
    - (1) Charitable remainder unitrusts, as defined by 26 U.S.C. 664;
    - (2) Charitable remainder annuity trusts, as defined by 26 U.S.C. 664;
    - (3) Pooled income fund trusts, as defined by 26 U.S.C. 642(c)(5);
    - (4) Charitable lead unitrusts qualifying under 26 U.S.C. 170(f)(2)(B);
    - (5) Charitable lead annuity trusts qualifying under 26 U.S.C. 170(f)(2)(B);
    - (6) Charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);

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<sup>158</sup> Section 57-38-01.21 was also amended by section 3 of Senate Bill No. 2160, chapter 458.

- (7) Deferred charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);
- (8) Charitable life estate agreements qualifying under 26 U.S.C. 170(f)(3)(B); or
- (9) Paid-up life insurance policies meeting the requirements of 26 U.S.C. 170.

"Planned gift" does not include a contribution using a charitable remainder unitrust or charitable remainder annuity trust unless the agreement provides that the trust may not terminate and beneficiaries' interest in the trust may not be assigned or contributed to the qualified nonprofit organization or qualified endowment sooner than the earlier of the date of death of the beneficiaries or five years from the date of the contribution.

"Planned gift" does not include a deferred charitable gift annuity unless the payment of the annuity is required to begin within the life expectancy of the annuitant or of the joint life expectancies of the annuitants, if more than one annuitant, as determined using the actuarial tables used by the internal revenue service in determining federal charitable income tax deductions on the date of the contribution.

"Planned gift" does not include a charitable gift annuity or deferred charitable gift annuity unless the annuity agreement provides that the interest of the annuitant or annuitants in the gift annuity may not be assigned to the qualified nonprofit organization or qualified endowment sooner than the earlier of the date of death of the annuitant or annuitants or five years after the date of the contribution.

"Planned gift" does not include a charitable gift annuity or deferred charitable gift annuity unless the annuity is a qualified charitable gift annuity for federal income tax purposes.

- c. "Qualified endowment" means a permanent, irrevocable fund held by a North Dakota incorporated or established organization that is:
    - (1) A qualified nonprofit organization; or
    - (2) A bank or trust company holding the fund on behalf of a qualified nonprofit organization.
  - d. "Qualified nonprofit organization" means a North Dakota incorporated or established tax-exempt organization under 26 U.S.C. 501(c) to which contributions qualify for federal charitable income tax deductions with an established business presence or situs in North Dakota.
6. The amount of the contribution upon which an allowable credit is computed must be added to federal taxable income in computing North Dakota taxable income in ~~the any~~ taxable year in which the ~~credit is first claimed~~ charitable gift reduces federal taxable income, but only to the extent that the contribution reduced federal taxable income.

**SECTION 5. 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 earned 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 earned qualified income of the lesser-earning spouse.
  3. ~~The tax commissioner shall prepare and make available to taxpayers a comprehensive table showing the credit under this section at brackets of earnings of the lesser-earning spouse and joint taxable income. The brackets of earnings may not be more than two thousand dollars.~~
  4. For a nonresident or part-year resident, the credit under this section must be adjusted based on the percentage calculated under subdivision f of subsection 1 of section 57-38-30.3.
- ~~5.4.~~ For purposes of this section:
- a. "Earned 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.
  - b. "Earned Qualifying income of the lesser-earning spouse" means the earned qualifying income of the spouse with the lesser amount of earned 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.

**SECTION 6. AMENDMENT.** Subsection 1 of section 57-38-01.31 of the North Dakota Century Code is amended and reenacted as follows:



1. A taxpayer who is an employer in this state is entitled to a credit against tax liability as determined under ~~section 57-38-29, sections~~ 57-38-30, ~~and~~ 57-38-30.3 equal to twenty-five percent of the reduction in compensation that the taxpayer continues to pay during the taxable year to, or on behalf of, each employee of the taxpayer during the period that the employee is mobilized under title 10 of the United States Code as a member of a reserve or national guard component of the armed forces of the United States. The maximum credit allowed for each eligible employee is one thousand dollars. The amount of the tax credit may not exceed the amount of the taxpayer's state tax liability for the tax year and an excess credit may be carried forward for up to five taxable years. For the purposes of this subsection:
  - a. "Reduction in compensation" means the amount by which the pay received during the taxable year by the employee for service under title 10 of the United States Code is less than the total amount of salary and related retirement plan contributions that would have been paid by the taxpayer to the employee for the same time period had the employee not been mobilized.
  - b. "Related retirement plan contributions" means the portion of voluntary or matching contributions paid by the taxpayer into a defined contribution plan maintained by the taxpayer for the employee.

**SECTION 7. AMENDMENT.** Section 57-38-29.3 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-29.3. Credit for premiums for long-term care partnership plan insurance coverage.**

A credit against an individual's tax liability under this chapter is provided to each taxpayer in the amount of the premiums paid during the taxable year by the taxpayer for qualified long-term care partnership plan insurance coverage for the taxpayer or the taxpayer's spouse, or both. The credit under this section for each insured individual may not exceed two hundred fifty dollars in any taxable year. ~~An individual who claims the credit under this section may not also claim the credit under section 57-38-29.2 for the same policy.~~ For purposes of this section, "qualified long-term care partnership plan" is one that:

1. Is a qualified long-term care insurance policy, as defined in section 7702B(b) of the Internal Revenue Code of 1986, with an issue date on or after the date specified in an approved medicaid state plan amendment that provides for the disregard of assets;
2. Meets the requirements of the long-term care insurance model regulations and the long-term care insurance model act promulgated by the national association of insurance commissioners as adopted as of October 2000, or the insurance commissioner certifies that the policy meets those requirements; and
3. Is purchased by an individual who:
  - a. Has not attained age sixty-one as of the date of purchase, if the policy provides compound annual inflation protection;
  - b. Has attained age sixty-one but has not attained age seventy-six as of the date of purchase, if the policy provides some level of inflation protection; or

- c. Has attained age seventy-six as of the date of purchase.

<sup>159</sup> **SECTION 8. AMENDMENT.** Subsections 2 and 3 of section 57-38-30.3 of the North Dakota Century Code are amended and reenacted as follows:

2. For purposes of this section, "North Dakota taxable income" means the federal taxable income of an individual, estate, or trust as computed under the Internal Revenue Code of 1986, as amended, adjusted as follows:
  - a. Reduced by interest income from obligations of the United States and income exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.
  - b. Reduced by the portion of a distribution from a qualified investment fund described in section 57-38-01 which is attributable to investments by the qualified investment fund in obligations of the United States, obligations of North Dakota or its political subdivisions, and any other obligation the interest from which is exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.
  - c. Reduced by the amount equal to the earnings that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under chapter 57-35.3.
  - d. Reduced by thirty percent of ~~the~~:
    - (1) ~~The excess of the taxpayer's net long-term capital gain and qualified dividend income that is taxed at the same rate as long-term capital gain for federal income tax purposes under Internal Revenue Code provisions in effect on December 31, 2008, for the taxable year over the net short-term capital loss for that year, as computed for purposes of the Internal Revenue Code of 1986, as amended. The adjustment provided by this subdivision is allowed only to the extent the net long-term capital gain is allocated to this state.~~
    - (2) The qualified dividend income that is taxed at the same rate as long-term capital gain for federal income tax purposes under Internal Revenue Code provisions in effect on December 31, 2008. The adjustment provided by this subdivision is allowed only to the extent the qualified dividend income is allocated to this state.
  - e. Increased by the amount of a lump sum distribution for which income averaging was elected under section 402 of the Internal Revenue Code of 1986 [26 U.S.C. 402], as amended. This adjustment does not apply if the taxpayer received the lump sum distribution while a nonresident of this state and the distribution is exempt from taxation by this state under federal law.

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<sup>159</sup> Section 57-38-30.3 was also amended by section 1 of House Bill No. 1072, chapter 462, section 13 of Senate Bill No. 2057, chapter 50, section 7 of Senate Bill No. 2210, chapter 398, section 7 of House Bill No. 1047, chapter 457, section 10 of Senate Bill No. 2034, chapter 460, and section 1 of Senate Bill No. 2208, chapter 463.

- f. Increased by an amount equal to the losses that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under chapter 57-35.3.
- g. Reduced by the amount received by the taxpayer as payment for services performed when mobilized under title 10 United States Code federal service as a member of the national guard or reserve member of the armed forces of the United States. This subdivision does not apply to federal service while attending annual training, basic military training, or professional military education.
- h. Reduced by income from a new and expanding business exempt from state income tax under section 40-57.1-04.
- i. Reduced by interest and income from bonds issued under chapter 11-37.
- j. Reduced by up to ten thousand dollars of qualified expenses that are related to a donation by a taxpayer or a taxpayer's dependent, while living, of one or more human organs to another human being for human organ transplantation. A taxpayer may claim the reduction in this subdivision only once for each instance of organ donation during the taxable year in which the human organ donation and the human organ transplantation occurs but if qualified expenses are incurred in more than one taxable year, the reduction for those expenses must be claimed in the year in which the expenses are incurred. For purposes of this subdivision:
  - (1) "Human organ transplantation" means the medical procedure by which transfer of a human organ is made from the body of one person to the body of another person.
  - (2) "Organ" means all or part of an individual's liver, pancreas, kidney, intestine, lung, or bone marrow.
  - (3) "Qualified expenses" means lost wages not compensated by sick pay and unreimbursed medical expenses as defined for federal income tax purposes, to the extent not deducted in computing federal taxable income, whether or not the taxpayer itemizes federal income tax deductions.
- k. Increased by the amount of the contribution upon which the credit under section 57-38-01.21 is computed, but only to the extent that the contribution reduced federal taxable income.
- l. Reduced by the amount of any payment received by a veteran or beneficiary of a veteran under section 37-28-03 or 37-28-04.
- m. Reduced by the amount received by a taxpayer that was paid by an employer under paragraph 4 of subdivision a of subsection 2 of section 57-38-01.25 to hire the taxpayer for a hard-to-fill position under section 57-38-01.25, but only to the extent the amount received by the taxpayer is included in federal taxable income. The reduction applies only if the employer is entitled to the credit under section 57-38-01.25. The taxpayer must attach a statement from the employer in which the employer certifies that the employer is entitled to the credit under section 57-38-01.25 and

which specifically identified the type of payment and the amount of the exemption under this section.

- n. Reduced by the amount up to a maximum of five thousand dollars, or ten thousand dollars if a joint return is filed, for contributions made under a higher education savings plan administered by the Bank of North Dakota, pursuant to section 6-09-38.
  - o. Reduced by the amount of income of a taxpayer, who resides within the boundaries of any reservation in this state and who is an enrolled member of a federally recognized Indian tribe, from activities or sources within the boundaries of any reservation in this state.
3. ~~Married individuals filing a joint federal income tax return shall file a joint state income tax return if the return is filed under this section. If separate federal income tax returns are filed, one spouse's state income tax return may be filed under this section and the other spouse's income tax return may be filed under the other provisions of this chapter. The same filing status used when filing federal income tax returns must be used when filing state income tax returns.~~

**SECTION 9. AMENDMENT.** Section 57-38-59.2 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-59.2. Withholding of lottery winnings.**

The North Dakota lottery shall deduct and withhold ~~five and fifty four one hundredths percent~~ at the highest marginal rate provided in section 57-38-30.3 of the total proceeds of state lottery winnings as North Dakota withholding tax if the winnings are subject to withholding. For purposes of this section, "winnings subject to withholding" means the proceeds in excess of five thousand dollars won from a lottery game operated pursuant to chapter 53-12. Every person who receives a payment from the winnings that are subject to withholding shall furnish the lottery director with a statement, made under the penalties of perjury, containing the name, address, and taxpayer identification number of the recipient. The North Dakota lottery shall file returns as provided in section 57-38-60 and is liable for the payment of the tax required to be withheld but is not liable to any person for the amount of the payment.

**SECTION 10. AMENDMENT.** Section 57-38.4-01 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.4-01. Definitions.**

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

1. "Affiliated corporation" means a parent corporation and any corporation of which more than fifty percent of the voting stock is owned directly or indirectly by the parent corporation or another member of the water's edge group.
2. "~~Domestic disclosure spreadsheet" means a spreadsheet that fully discloses the income reported to each state, the state tax liability, the method used for apportioning or allocating income to the various states, and other information provided for by rules as may be necessary to determine the proper amount of tax due to each state and to identify the water's edge group.~~

- ~~3-~~ "Existing corporation" means a corporation that filed a North Dakota income tax return for any year after taxable year 1979 or was a successor to or unitary with a corporation that filed a North Dakota income tax return for any year after taxable year 1979.
- ~~4-3.~~ "Foreign dividends" means any dividend received by a member of the water's edge group from any affiliated corporation incorporated outside the fifty states and District of Columbia, including amounts included in income computed under sections 951 through 954 of the Internal Revenue Code.
- ~~5-4.~~ "Income from 80/20 corporations" means net book income after taxes of a corporation which is incorporated in the United States and eligible to be included in the federal consolidated return and which has twenty percent or less of its property and payroll as determined by factoring under chapter 57-38.1 assigned to locations inside the fifty states and the District of Columbia. For purposes of determining eligibility for inclusion in a federal consolidated return under this subsection, the eighty percent stock ownership requirements of section 1504 of the Internal Revenue Code shall be reduced to ownership of over fifty percent of the voting stock directly or indirectly owned or controlled by an includable corporation.
- ~~6-5.~~ "New corporation" means a corporation that has not filed an income tax return in North Dakota for any year after the tax year 1979. A new corporation does not include a corporation which is a successor to or which is affiliated with a corporation that filed an income tax return in North Dakota for any year after the tax year 1979. A new corporation does not include a business reorganization or acquisition, except a corporation with no previous activity in North Dakota which acquires an existing corporation and increases and maintains the threshold activity of the existing corporation by twenty-five percent or more shall be treated as a new corporation.
- ~~7-6.~~ "Threshold activity" means the yearly average combined property and payroll in North Dakota of a corporation and its affiliates for the previous three years.
- ~~8-7.~~ "Water's edge group" includes the following entities:
- a. Any affiliated corporation incorporated in the United States or a possession of the United States, as described in sections 931 through 936 of the Internal Revenue Code. Corporations incorporated in the United States must be eligible to be included in a federal consolidated return and must have more than twenty percent of its property and payroll, as determined by factoring under chapter 57-38.1, assigned to locations inside the fifty states, the District of Columbia, and possessions of the United States. For purposes of determining eligibility for inclusion in a federal consolidated return under this subsection, the eighty percent stock ownership requirements of section 1504 of the Internal Revenue Code shall be reduced to ownership of over fifty percent of the voting stock directly or indirectly owned or controlled by an includable corporation.
  - b. Domestic international sales corporations, as described in sections 991 through 994 of the Internal Revenue Code, and foreign sales corporations, as described in sections 921 through 927 of the Internal Revenue Code.
  - c. Export trade corporations, as described in sections 970 through 972 of the Internal Revenue Code.

- d. Foreign corporations deriving gain or loss from a disposition of a United States real property interest to the extent recognized under section 897 of the Internal Revenue Code.
- e. Any corporation incorporated outside the United States if over fifty percent of its voting stock is owned directly or indirectly by an affiliated corporation and if more than twenty percent of the average of its payroll and property is assignable to a location within the United States.

9-8. "Worldwide combined report" means a combined report with respect to a unitary affiliated group irrespective of the country or countries in which any member of the affiliated group is incorporated or conducts business activity.

**SECTION 11. AMENDMENT.** Subsection 1 of section 57-38.4-02 of the North Dakota Century Code is amended and reenacted as follows:

1. A corporation electing to file using the water's edge method must comply with the following:
  - a. The election must be made on the return as originally and timely filed.
  - b. ~~The corporation may not reduce taxable income for federal taxes deducted under subdivision c of subsection 1 of section 57-38-01.3.~~
  - e. The water's edge election is binding for five consecutive taxable years after making the election.
  - d. ~~The corporation must file with the tax commissioner a domestic disclosure spreadsheet, after which the corporation must file a domestic disclosure spreadsheet only every third year while the election remains in effect.~~

**SECTION 12. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2010.

Approved April 27, 2011  
Filed April 27, 2011

## CHAPTER 460

### SENATE BILL NO. 2034

(Legislative Management)  
(Energy Development and Transmission Committee)

AN ACT to create and enact a new subsection to section 57-43.2-01 of the North Dakota Century Code, relating to the definition of green diesel; to amend and reenact sections 17-03-01, 17-03-04, and 17-03-05, subsection 1 of section 17-07-01, sections 19-10-01, 54-17.7-02, 54-44.5-09, 57-38-01.22, and 57-38-01.23, subsection 7 of section 57-38-30.3, section 57-38-30.6, subsection 2 of section 57-38.6-01, and subsection 51 of section 57-39.2-04 of the North Dakota Century Code, relating to green diesel; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 17-03-01 of the North Dakota Century Code is amended and reenacted as follows:

##### 17-03-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Biodiesel production facility" means a producer of a ~~biodegradable, combustible liquid fuel that is derived from vegetable oil or animal fat and which is suitable for blending with diesel fuel for use in internal combustion diesel engines~~ fuel composed of mono-alkyl esters of long chain fatty acids derived from vegetable oil or animal fats that meets American society for testing and materials specification D 6751. The facility must be located in this state ~~and:~~
  - a. ~~Agricultural producers must hold at least ten percent of the ownership interest in the facility; or~~
  - b. ~~Residents of this state must own at least fifty percent of the ownership interest of the facility.~~
2. "Biofuel partnership in assisting community expansion fund" or "fund" means a fund established to buy down the interest rate on loans to biodiesel ~~and ethanol, and green diesel~~ production facilities and to livestock operations as provided under this chapter.
3. "Ethanol production facility" means a producer of agriculturally derived denatured ethanol that is suitable for blending with a petroleum product for use in internal combustion engines. The facility must be located in this state ~~and:~~
  - a. ~~Agricultural producers must hold at least ten percent of the ownership interest in the facility; or~~
  - b. ~~Residents of this state must own at least fifty percent of the ownership interest of the facility.~~

4. "Green diesel production facility" means a producer of a fuel produced from nonfossil renewable resources, including agricultural or silvicultural plants, animal fats, residue, and waste generated from the production, processing, and marketing of agricultural products, silvicultural products, and other renewable resources, which meets applicable American society for testing and materials specifications. The facility must be located in this state.
5. "Livestock operation" means a livestock feeding, handling, milking, or holding operation located in this state which uses as part of its operation a byproduct produced at a biodiesel or an ethanol production facility.

**SECTION 2. AMENDMENT.** Section 17-03-04 of the North Dakota Century Code is amended and reenacted as follows:

**17-03-04. Fund moneys - Eligible uses.**

1. a. The fund moneys may be used to participate in an interest rate buydown on a loan to a biodiesel ~~or an~~ ethanol, or green diesel production facility or to a livestock operation for the following eligible uses:
  - (1) Purchase or construction of real property.
  - (2) Expansion of facilities.
  - (3) Purchase or installation of equipment, including a biodigester system.
- b. The loan funds may not be used to refinance any existing debt or for the relocation within this state of the biodiesel ~~or~~ ethanol, or green diesel production facility or the livestock operation.
2. a. The maximum amount from the fund in the interest rate buydown for a biodiesel ~~or~~ ethanol, or green diesel production facility may not exceed five hundred thousand dollars to any single biodiesel ~~or~~ ethanol, or green diesel production facility under this chapter.
- b. Except as provided in subdivision c, the maximum amount from the fund in the interest rate buydown for a livestock operation may not exceed two hundred fifty thousand dollars to any single livestock operation under this chapter.
- c. If a livestock operation has reached the limit provided for in subdivision b as a result of any activity other than the purchase or installation of a biodigester, that operation is entitled to receive from the fund up to two hundred fifty thousand dollars as an additional interest rate buydown on the operation's purchase or installation of a biodigester system.
3. The fund participation is limited to the amount required to buy down the interest to five hundred basis points below the national prime interest rate.
4. The Bank of North Dakota shall adopt rules to implement this chapter.

**SECTION 3. AMENDMENT.** Section 17-03-05 of the North Dakota Century Code is amended and reenacted as follows:



**17-03-05. Partnership in assisting community expansion fund incentive limitation.**

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

<sup>160</sup> **SECTION 4. AMENDMENT.** Subsection 1 of section 17-07-01 of the North Dakota Century Code is amended and reenacted as follows:

1. The energy policy commission is composed of:
  - a. The commissioner of commerce;
  - b. A representative of the agriculture community appointed by the governor;
  - c. A representative recommended by the lignite energy council appointed by the governor;
  - d. A representative recommended by the North Dakota petroleum council appointed by the governor;
  - e. A member from the biodiesel or green diesel industry appointed by the governor;
  - f. A member from the biomass industry appointed by the governor;
  - g. A member from the wind industry appointed by the governor;
  - h. A member from the ethanol industry appointed by the governor;
  - i. A representative recommended by the North Dakota petroleum marketers association appointed by the governor;
  - j. A member from the North Dakota investor-owned electric utility industry appointed by the governor;
  - k. A member from the generation and transmission electric cooperative industry appointed by the governor;
  - l. A member from the lignite coal-producing industry appointed by the governor;
  - m. A member from the refining or gas-processing industry appointed by the governor; and
  - n. Additional nonvoting members appointed by the governor.

**SECTION 5. AMENDMENT.** Section 19-10-01 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>160</sup> Section 17-07-01 was also amended by section 1 of House Bill No. 1218, chapter 158.

**19-10-01. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Adulterated", when used to describe any petroleum or alternative fuel product, denotes a petroleum or alternative fuel product which fails to meet the specifications prescribed by this chapter.
2. "Alternative fuel" means a fuel for an engine or vehicle, or used as heating oil, other than a petroleum-based fuel. The term includes biodiesel and green diesel as defined in section 57-43.2-01.
3. ~~"Biodiesel" means any non-petroleum based diesel fuel made from renewable resources such as vegetable oils or animal fats.~~
4. "Department" means the state department of health.
- ~~5-4.~~ "Diesel fuel" is any petroleum product intended for use or offered for sale as a fuel for engines in which the fuel is injected into the combustion chamber and ignited by pressure without electric spark.
- ~~6-5.~~ "Gasoline" is a refined petroleum naphtha which by its composition is suitable for use as a carburant in internal combustion engines.
- ~~7-6.~~ "Heating oil" is any product intended for use or offered for sale as a furnace oil, range oil, or fuel oil for heating and cooking purposes to be used in burners other than wick burners regardless of whether the product is designated as furnace oil, range oil, fuel oil, gas oil, or is given any other name or designation.
- ~~8-7.~~ "Kerosene" is a petroleum fraction which is free from water, additives, foreign or suspended matter, and is suitable for use as an illuminating oil.
- ~~9-8.~~ "Lubricating oil" is any petroleum, or other product, used for the purpose of reducing friction, heat, or wear in automobiles, tractors, gasoline engines, diesel engines, and other machines.
- ~~10-9.~~ "Misbranded", when used in connection with any petroleum or alternative fuel product, denotes a petroleum or alternative fuel product which is not labeled as required under the provisions of this chapter.
- ~~14-10.~~ "Sell" and "sale" include the keeping, offering, or exposing for sale, transportation, or exchange of the restricted or prohibited article.
- ~~12-11.~~ "Tractor fuel" is any product, other than gasoline or kerosene, intended for use or offered for sale as a fuel for tractors, regardless of whether the product is designated as distillate, gas oil, fuel oil, or is given any other name or designation.

**SECTION 6. AMENDMENT.** Section 54-17.7-02 of the North Dakota Century Code is amended and reenacted as follows:

**54-17.7-02. Definitions.**

As used in this chapter:

1. "Authority" means the industrial commission acting as the North Dakota pipeline authority.
2. "Commission" means the North Dakota industrial commission.
3. "Energy-related commodities" means any substance, element, or compound, either gaseous, liquid, or solid, associated with the production, refining, or processing of renewable energy, crude oil, natural gas, coal, or coal byproducts, including oil, natural gas liquids, refined petroleum products, carbon dioxide, hydrogen, ethanol, propane, butane, ethane, methane, sulfur, helium, synthetic fuels, nitrogen, biodiesel, green diesel, and liquids made from coal.
4. "Natural gas" means hydrocarbons or nonhydrocarbons that at atmospheric conditions of temperature and pressure are in a gaseous phase.
5. "Notice of intent" means the notice a person delivers to the authority indicating willingness to construct pipeline facilities contemplated by the authority or to provide services fulfilling the need for such pipeline facilities.
6. "Pipeline facilities" means pipelines, pumps, compressors, storage, and all other facilities, structures, and properties incidental and necessary or useful in the interconnection of pipelines or the transportation, distribution, and delivery of energy-related commodities to points of sale or consumption or to the point or points of distribution for consumption located within and without this state.
7. "Project area" means the geographic area in which construction of a pipeline facility contemplated by the authority is likely to occur.

**SECTION 7. AMENDMENT.** Section 54-44.5-09 of the North Dakota Century Code is amended and reenacted as follows:

**54-44.5-09. Office of renewable energy and energy efficiency.**

The office of renewable energy and energy efficiency is established within the division of community services. The office shall assist in the development of renewable energy within this state to provide secure, diverse, sustainable, and competitive renewable energy supplies and promote the conservation of energy and the wise use of energy resources in both the public and private sectors. The office shall communicate and disseminate information concerning state and federal energy conservation and renewable energy incentives, including tax credits, financing and grants to business entities seeking to invest in wind-generated power and transmission, ethanol production and distribution, and the development of biodiesel, green diesel, biomass, solar, hydropower, geothermal, and other renewable energy sources. The office also shall ~~also~~ manage and distribute all production incentive payments as authorized by chapter 17-02.

**SECTION 8. AMENDMENT.** Section 57-38-01.22 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.22. Income tax credit for blending of biodiesel fuel or green diesel fuel.**

A fuel supplier licensed pursuant to section 57-43.2-05 who blends biodiesel fuel or green diesel fuel is entitled to a credit against tax liability determined under section 57-38-30 or 57-38-30.3 in the amount of five cents per gallon [3.79 liters] of biodiesel

fuel or green diesel fuel of at least five percent blend, otherwise known as B5. For purposes of this section, "~~biodiesel~~" ~~means and~~ "green diesel" ~~mean~~ fuel ~~meeting the specifications adopted by the American society for testing and materials as defined in section 57-43.2-01~~. The credit under this section may not exceed the taxpayer's liability as determined under this chapter for the taxable year and each year's unused credit amount may be carried forward for up to five taxable years.

A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of 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.

**SECTION 9. AMENDMENT.** Section 57-38-01.23 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.23. Income tax credit for biodiesel or green diesel sales equipment costs.**

A seller of biodiesel fuel or green diesel fuel is entitled to a credit against tax liability determined under section 57-38-30 or 57-38-30.3 in the amount of ten percent per year for five years of the biodiesel or green diesel fuel seller's direct costs incurred after December 31, 2004, to adapt or add equipment to a facility, licensed under section 57-43.2-05, to enable the facility to sell diesel fuel containing at least two percent biodiesel fuel or green diesel fuel by volume. For purposes of this section, "~~biodiesel fuel~~" ~~means and~~ "green diesel fuel" ~~mean~~ fuel ~~meeting the specifications adopted by the American society for testing and materials as defined in section 57-43.2-01~~. The credit under this section may not exceed a taxpayer's liability as determined under this chapter for the taxable year and each year's unused credit amount may be carried forward for up to five taxable years. A biodiesel or green diesel fuel seller is limited to fifty thousand dollars in the cumulative amount of credits under this section for all taxable years. A biodiesel or green diesel fuel seller may not claim a credit under this section for any taxable year before the taxable year in which the facility begins selling biodiesel or green diesel fuel containing at least two percent biodiesel or green diesel fuel by volume, but eligible costs incurred before the taxable year sales begin may be claimed for purposes of the credit under this section for taxable years on or after the taxable year sales of biodiesel or green diesel fuel begin.

A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of 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.

<sup>161</sup> **SECTION 10. AMENDMENT.** Subsection 7 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>161</sup> Section 57-38-30.3 was also amended by section 1 of House Bill No. 1072, chapter 462, section 13 of Senate Bill No. 2057, chapter 50, section 7 of Senate Bill No. 2210, chapter 398, section 7 of House Bill No. 1047, chapter 457, section 8 of House Bill No. 1124, chapter 459, and section 1 of Senate Bill No. 2208, chapter 463.

7. A taxpayer filing a return under this section is entitled to the following tax credits:
- a. Family care tax credit under section 57-38-01.20.
  - b. Renaissance zone tax credits under sections 40-63-04, 40-63-06, and 40-63-07.
  - c. Agricultural business investment tax credit under section 57-38.6-03.
  - d. Seed capital investment tax credit under section 57-38.5-03.
  - e. Planned gift tax credit under section 57-38-01.21.
  - f. Biodiesel fuel 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.
  - j. Microbusiness tax credit under section 57-38-01.27.
  - k. Marriage penalty credit under section 57-38-01.28.
  - l. Homestead income tax credit under section 57-38-01.29.
  - m. Commercial property income tax credit under section 57-38-01.30.
  - n. Research and experimental expenditures under section 57-38-30.5.
  - o. Geothermal energy device installation credit under section 57-38-01.8.
  - p. Long-term care partnership plan premiums income tax credit under section 57-38-29.3.
  - q. Employer tax credit for salary and related retirement plan contributions of mobilized employees under section 57-38-01.31.

**SECTION 11. AMENDMENT.** Section 57-38-30.6 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-30.6. Corporate income tax credit for biodiesel or green diesel production or soybean and canola crushing facility equipment costs.**

A taxpayer is entitled to a credit against tax liability determined under section 57-38-30 in the amount of ten percent per year for five years of the taxpayer's direct costs incurred after December 31, 2002, to adapt or add equipment to retrofit an existing facility or construction of a new facility in this state for the purpose of producing or blending diesel fuel containing at least two percent biodiesel fuel or green diesel fuel by volume or of the taxpayer's direct costs incurred after December 31, 2008, to adapt or add equipment to retrofit an existing facility or construction of a new facility in this state for the purpose of producing crushed soybeans or canola. For purposes of this section, "biodiesel" ~~means~~ and "green

~~diesel" mean fuel meeting the specifications adopted by the American society for testing and materials as defined in section 57-43.2-01.~~ The credit under this section may not exceed the taxpayer's liability as determined under this chapter for the taxable year and each year's credit amount may be carried forward for up to five taxable years. A taxpayer is limited to two hundred fifty thousand dollars in the cumulative amount of credits under this section for all taxable years. A taxpayer may not claim a credit under this section for any taxable year before the taxable year in which the facility begins production or blending of diesel fuel containing at least two percent biodiesel fuel or green diesel fuel by volume or begins crushing soybeans or canola, but eligible costs incurred before the taxable year production, blending, or crushing begins may be claimed for purposes of the credit under this section for taxable years on or after the taxable year production, blending, or crushing begins.

**SECTION 12. AMENDMENT.** Subsection 2 of section 57-38.6-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Biofuels production facility" means a corporation, limited liability company, partnership, individual, or association in this state:
  - a. Involved in production of diesel fuel containing at least five percent biodiesel ~~meeting the specifications adopted by the American society for testing and materials~~ or green diesel as defined in section 57-43.2-01;
  - b. Involved in the production of corn-based ethanol or cellulose-based ethanol; or
  - c. Involved in a soybean or canola crushing facility.

<sup>162</sup> **SECTION 13. AMENDMENT.** Subsection 51 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

51. Gross receipts from the sale of equipment to a facility, licensed under section 57-43.2-05, to enable the facility to sell diesel fuel containing at least two percent biodiesel or green diesel fuel as defined under section 57-43.2-01 by volume. ~~For purposes of this subsection, "biodiesel fuel" means fuel meeting the specifications adopted by the American society for testing and materials.~~

**SECTION 14.** A new subsection to section 57-43.2-01 of the North Dakota Century Code is created and enacted as follows:

"Green diesel" means a fuel produced from nonfossil renewable resources, including agricultural or silvicultural plants, animal fats, residue, and waste generated from the production, processing, and marketing of agricultural products, silvicultural products, and other renewable resources, which meets applicable American society for testing and materials specifications.

**SECTION 15. EFFECTIVE DATE.** Section 13 of this Act is effective for taxable events after June 30, 2011.

Approved April 25, 2011  
Filed April 25, 2011

<sup>162</sup> Section 57-39.2-04 was also amended by section 2 of House Bill No. 1046, chapter 486, section 1 of House Bill No. 1334, chapter 468, section 3 of Senate Bill No. 2172, chapter 465, section 1 of House Bill No. 1424, chapter 467, and section 1 of Senate Bill No. 2292, chapter 466.

## CHAPTER 461

### HOUSE BILL NO. 1057

(Legislative Management)  
(Workforce Committee)

AN ACT to amend and reenact section 57-38-01.26 of the North Dakota Century Code, relating to the angel fund investment tax credit; to provide for a report to the legislative management; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 57-38-01.26 of the North Dakota Century Code is amended and reenacted as follows:

#### **57-38-01.26. Angel fund investment tax credit.**

1. A taxpayer is entitled to a credit against state income tax liability under section 57-38-30 or 57-38-30.3 for an investment made in an angel fund that is ~~incorporated in a domestic organization created under the laws of this state.~~ The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount ~~invested~~ remitted by the taxpayer ~~into~~ an angel fund during the taxable year. The aggregate annual credit for which a taxpayer may obtain a tax credit is not more than forty-five thousand dollars. The aggregate lifetime credits under this section that may be obtained by an individual, married couple, passthrough entity and its affiliates, or other taxpayer is one hundred fifty thousand dollars. The investment used to calculate the credit under this section may not be used to calculate any other income tax deduction or credit allowed by law.
2. To be eligible for the credit, the investment must be at risk in the angel fund for at least three years. Investments placed in escrow do not qualify for the credit. The credit must be claimed in the taxable year in which the investment in the angel fund was received by the angel fund. The credit allowed may not exceed the liability for tax under this chapter. If the amount of credit determined under this section exceeds the liability for tax under this chapter, the excess may be carried forward to each of the ~~four~~ seven succeeding taxable years. A taxpayer claiming a credit under this section may not claim any credit available to the taxpayer as a result of an investment made by the angel fund in a qualified business under chapter 57-38.5 or 57-38.6.
3. An angel fund must:
  - a. Be a partnership, limited partnership, corporation, limited liability company, limited liability partnership, trust, or estate organized on a for-profit basis which is headquartered in this state.
  - b. Be organized for the purpose of investing in a portfolio of at least three primary sector companies that are early-stage and mid-stage private, nonpublicly traded enterprises with strong growth potential. For purposes of this section, an early-stage entity means an entity with annual revenues of up to two million dollars and a mid-stage entity means an entity with

- annual revenues over two million dollars not to exceed ten million dollars. Early-stage and mid-stage entities do not include those that have more than twenty-five percent of their revenue from income-producing real estate.
- c. Consist of at least six accredited investors as defined by securities and exchange commission regulation D, rule 501.
  - d. Not have more than twenty-five percent of its capitalized investment assets owned by an individual investor.
  - e. Have at least five hundred thousand dollars in commitments from accredited investors and that capital must be subject to call to be invested over an unspecified number of years to build a portfolio of investments in enterprises.
  - f. Be member-managed or a manager-managed limited liability company and the investor members or a designated board that includes investor members must make decisions as a group on which enterprises are worthy of investments.
  - g. Be certified as an angel fund that meets the requirements of this section by the department of commerce.
  - h. Be in compliance with the securities laws of this state.
  - i. Within thirty days after the date on which an investment in an angel fund is made, the angel fund shall file with the tax commissioner and provide to the investor completed forms prescribed by the tax commissioner which show as to each investment in the angel fund the following:
    - (1) The name, address, and social security number or federal employer identification number of the taxpayer or passthrough entity that made the investment;
    - (2) The dollar amount remitted by the taxpayer or passthrough entity; and
    - (3) The date the payment was received by the angel fund for the investment.
  - j. Within thirty days after the end of a calendar year, the angel fund shall file with the tax commissioner a report showing the name and principal place of business of each enterprise in which the angel fund has an investment.
4. The tax commissioner may disclose to the legislative management the reported information described under paragraphs 2 and 3 of subdivision i of subsection 3 and the reported information described under subdivision j of subsection 3.
  5. Angel fund investors may be actively involved in the enterprises in which the angel fund invests but the angel fund may not invest in any enterprise if any one angel fund investor owns directly or indirectly more than forty-nine percent of the ownership interests in the enterprise. The angel fund may not invest in an enterprise if any one partner, shareholder, or member of a passthrough



entity that directly or indirectly owns more than forty-nine percent of the ownership interests in the enterprise.

- 5-6. Investors in one angel fund may not receive more than five million dollars in aggregate credits under this section during the life of the angel fund but this provision may not be interpreted to limit additional investments in that angel fund.
7. a. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed must be determined at the passthrough entity level.
- b. For the first two taxable years beginning after December 31, 2010, if a passthrough entity does not elect to sell, transfer, or assign the credit as provided under this subsection and subsection 8, 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.
- c. For the first two taxable years beginning after December 31, 2010, if a passthrough entity elects to sell, transfer, or assign a credit as provided under this subsection and subsection 8, the passthrough entity shall make an irrevocable election to sell, transfer, or assign the credit on the return filed by the entity for the taxable year in which the credit was earned. A passthrough entity that makes a valid election to sell, transfer, or assign a credit shall sell one hundred percent of the credit earned, may sell the credit to only one purchaser, and shall comply with the requirements of this subsection and subsection 8.
8. For the first two taxable years beginning after December 31, 2010, a taxpayer may elect to sell, transfer, or assign all of the earned or excess tax credit earned under this section for investment in an angel fund established after July 31, 2011, subject to the following:
- a. A taxpayer's total credit sale, transfer, or assignment under this section may not exceed one hundred thousand dollars over any combination of taxable years. The cumulative credits transferred by all investors in an angel fund may not exceed fifty percent of the aggregate credits under this section during the life of the angel fund under subsection 6.
- b. If the taxpayer elects to sell, assign, or transfer a 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. 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. A sale, assignment, or transfer of a tax credit under this section is irrevocable and the purchaser of the tax credit may not sell, assign, or otherwise transfer the credit.
- 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 establish necessary administrative provisions for the credit under this section, including provisions to permit verification of the validity and timeliness of the transferred tax credit.

**SECTION 2. REPORT TO THE LEGISLATIVE MANAGEMENT.** During the 2011-12 and 2013-14 interims, the tax commissioner shall report to the legislative management on the number of in-state and out-of-state investors, amount of investment, and amount of tax credits accrued, claimed, and transferred by each individual angel fund.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2010.

Approved May 5, 2011  
Filed May 5, 2011

## CHAPTER 462

### HOUSE BILL NO. 1072

(Representatives Nathe, Belter, L. Meier, Porter)  
(Senators Cook, Hogue)  
(At the request of the Tax Commissioner)

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 to remove the marriage penalty contained in the federal standard deduction for married persons filing jointly; and to provide an effective date.

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

<sup>163</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:

For married individuals filing jointly, reduced by an amount equal to the excess of the recomputed itemized deductions or standard deduction over the amount of the itemized deductions or standard deduction deducted in computing federal taxable income. For purposes of this subdivision, "itemized deductions or standard deduction" means the amount under section 63 of the Internal Revenue Code that the married individuals deducted in computing their federal taxable income and "recomputed itemized deductions or standard deduction" means an amount determined by computing the itemized deductions or standard deduction in a manner that replaces the basic standard deduction under section 63(c)(2) of the Internal Revenue Code for married individuals filing jointly with an amount equal to double the amount of the basic standard deduction under section 63(c)(2) of the Internal Revenue Code for a single individual other than a head of household and surviving spouse. If the married individuals elected under section 63(e) of the Internal Revenue Code to deduct itemized deductions in computing their federal taxable income even though the amount of the allowable standard deduction is greater, the reduction under this subdivision is not allowed. Married individuals filing jointly shall compute the available reduction under this subdivision in a manner prescribed by the tax commissioner.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2010.

Approved April 4, 2011  
Filed April 4, 2011

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<sup>163</sup> Section 57-38-30.3 was also amended by section 13 of Senate Bill No. 2057, chapter 50, section 7 of Senate Bill No. 2210, chapter 398, section 7 of House Bill No. 1047, chapter 457, section 8 of House Bill No. 1124, chapter 459, section 10 of Senate Bill No. 2034, chapter 460, and section 1 of Senate Bill No. 2208, chapter 463.

## CHAPTER 463

### SENATE BILL NO. 2208

(Senators Schaible, Cook, Marcellais)  
(Representatives Rohr, Schmidt)

AN ACT to amend and reenact subdivision o of subsection 2 of section 57-38-30.3 of the North Dakota Century Code, relating to the income tax exemption applying to qualifying reservation residents, activities, and sources; and to provide an effective date.

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

<sup>164</sup> **SECTION 1. AMENDMENT.** Subdivision o of subsection 2 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

- o. Reduced by the amount of income of a taxpayer, who resides anywhere within the exterior boundaries of anya reservation situated in this state or situated both in this state and in an adjoining state and who is an enrolled member of a federally recognized Indian tribe, from activities or sources anywhere within the exterior boundaries of anya reservation situated in this state or both situated in this state and in an adjoining state.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2010.

Approved April 19, 2011  
Filed April 20, 2011

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<sup>164</sup> Section 57-38-30.3 was also amended by section 1 of House Bill No. 1072, chapter 462, section 13 of Senate Bill No. 2057, chapter 50, section 7 of Senate Bill No. 2210, chapter 398, section 7 of House Bill No. 1047, chapter 457, section 8 of House Bill No. 1124, chapter 459, and section 10 of Senate Bill No. 2034, chapter 460.

## CHAPTER 464

### SENATE BILL NO. 2170

(Senator Cook)  
(Representative Belter)

AN ACT to create and enact a new section to chapter 57-38 of the North Dakota Century Code, relating to the imposition of individual income taxes and employer income tax withholding for mobile workforce employees; to amend and reenact subsection 1 of section 57-38-59 of the North Dakota Century Code, relating to the imposition of individual income taxes and employer income tax withholding for mobile workforce employees; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 57-38-59 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~Every~~Except as provided in section 2 of this Act, every employer making payment of wages to employees shall deduct and withhold from their wages such percentage or percentages, as determined by the tax commissioner, multiplied times the total amount required to be deducted by an employer from wages of an employee under the provisions of the Internal Revenue Code of 1986, ~~and as hereafter amended~~, as will approximate the income taxes due the state. The amount of tax withheld must be computed without regard to any other amount required to be withheld ~~thereunder~~, but the tax withheld must as closely as possible pay any tax liability imposed by this chapter.

**SECTION 2.** A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

#### **Nonresident mobile workforce - Computation of taxable income - Exclusion - Exception for employer withholding - Returns required.**

1. a. Compensation subject to withholding under section 57-38-59, without regard to subsection 3, that is received by a nonresident for employment duties performed in this state, shall be excluded from state source income if:
  - (1) The nonresident has no other income from sources in this state for the tax year in which the compensation was received;
  - (2) The nonresident is present in this state to perform employment duties for not more than twenty days during the tax year in which the compensation is received. Presence in this state by the nonresident for any part of a day constitutes presence for that day unless the presence is purely for purposes of transit through the state; and
  - (3) The nonresident's state of residence provides a substantially similar exclusion or does not impose an individual income tax or the nonresident's income is exempt from taxation by this state under the United States Constitution or federal statute.

- b. This subsection does not apply to compensation received in this state by:
- (1) A professional athlete or member of a professional athletic team;
  - (2) A professional entertainer performing services in the professional performing arts;
  - (3) A person of prominence performing services for compensation on a per event basis;
  - (4) A person performing construction services to improve real property;
  - (5) A key employee under section 416(i) of the Internal Revenue Code, as amended [26 U.S.C. 416(i)], for the year immediately preceding the current tax year. A determination under this paragraph must be made without regard to ownership or the existence of a benefit plan;
  - (6) An employee of a noncorporate employer, who would be a key employee without regard to ownership or the existence of a benefit plan, for the year immediately preceding the current tax year under section 416(i) of the Internal Revenue Code [26 U.S.C. 416(i)], if the term "employee" were substituted for the term "officer" in section 416(i) (1)(A)(i) of the Internal Revenue Code and if such person is one of the noncorporate employer's fifty highest paid employees without regard to whether such person is an officer.
- c. This subsection shall not prevent the operation, renewal, or initiation of any agreement with another state authorized under section 57-38-59.1.
- d. This subsection creates an exclusion from nonresident compensation under certain de minimus circumstances and has no application to this state's jurisdiction to impose this or any other tax on any taxpayer.
2. a. A nonresident whose only state source income is compensation excluded under subsection 1 does not have an income tax liability and is not required to file a return as prescribed in section 57-38-31, except nothing in this subsection prohibits the tax commissioner from exercising the commissioner's discretion to require the filing of an informational return by a nonresident employee described in subdivision a of subsection 1.
- b. This subsection is applicable to the determination of an individual income taxpayer's filing requirement and has no application to the imposition of, or this state's jurisdiction to impose, this or any other tax on any taxpayer.
3. a. No amount is required to be deducted or retained from compensation paid to a nonresident for employment duties performed in this state if the compensation is excluded from state source income under subsection 1, without regard to paragraph 1 of subdivision a of subsection 1. The number of days a nonresident employee is present in this state for purposes of paragraph 2 of subdivision a of subsection 1 must include all days the nonresident employee is present and performing employment duties on behalf of the employer and any other related person.

- (1) For purposes of this subsection, "related person" means a person that, with respect to the employer during all or any portion of the taxable year, is:
  - (a) A related entity;
  - (b) A component member as defined in section 1563(b) of the Internal Revenue Code [26 U.S.C. 1563(b)];
  - (c) A person to or from whom there is attribution to stock ownership as provided in section 1563(e) of the Internal Revenue Code; or
  - (d) A person that, notwithstanding its form of organization, bears the same relationship to the employer as a person described in subparagraphs a through c.
- (2) For purposes of this subsection, "related entity" means:
  - (a) A stockholder who is an individual, or a member of the stockholder's family as provided in section 318 of the Internal Revenue Code [26 U.S.C. 318] if the stockholder and the members of the stockholder's family own, directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty percent of the value of the employer's outstanding stock;
  - (b) A stockholder, or a stockholder's partnership, limited liability company, estate, trust, or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts, and corporations own, directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty percent of the value of the employer's outstanding stock; or
  - (c) A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of the federal Internal Revenue Code if the employer owns, directly, indirectly, beneficially, or constructively, at least fifty percent of the value of the corporation's outstanding stock. The attribution rules of the federal Internal Revenue Code shall apply for purposes of determining whether the ownership requirements of this definition have been met.
- b. An employer that erroneously applies the income tax withholding exception solely as a result of miscalculating the number of days a nonresident employee is present in this state to perform employment duties shall not be subject to the penalty imposed in section 57-38-45 if:
  - (1) The employer relied on the employer's regularly maintained time and attendance system that:
    - (a) Requires the employee to contemporaneously record the employee's daily work location each day the employee is present in a state other than the employee's state of residence; and

- (b) Is used by the employer to allocate the employee's wages between all taxing jurisdictions in which the employee performs duties;
- (2) The employer relied on the employee's travel records that the employer requires the employee to regularly maintain and contemporaneously record the employee's travel and daily work location; or
- (3) The employer does not require the records described in paragraph 1 or 2, and relied on travel expense reimbursement records that the employer requires the employee to submit on a regular and contemporaneous basis.
- c. This subsection establishes an exception to income tax withholding and deduction requirements and does not apply to the imposition of, or the state's jurisdiction to impose this, or any other tax on the employer.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2012.

Approved April 19, 2011  
Filed April 19, 2011



## CHAPTER 465

### SENATE BILL NO. 2172

(Senators Oehlke, Hogue, Dotzenrod, Krebsbach)  
(Representatives D. Johnson, Wingham)

AN ACT to create and enact a new subsection to section 57-39.2-04 of the North Dakota Century Code, relating to a sales tax exemption for receipts from coin-operated amusement or entertainment machines; to amend and reenact subsections 21, 22, and 23 of section 57-39.2-01 and subsection 1 of section 57-39.2-02.1 of the North Dakota Century Code, relating to a sales tax exemption for receipts from coin-operated amusement or entertainment machines; and to provide an effective date.

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

**SECTION 1. 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 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 accommodations, tickets, or admissions to any place of amusement, athletic event, or place of entertainment, ~~including the playing of any machine for amusement or entertainment in response to the use of a coin;~~ and the sales of magazines and other periodicals. By the term "processing" is meant any tangible personal property including containers which it is intended, by means of fabrication, compounding, manufacturing, producing, or germination shall become an integral or an ingredient or component part of other tangible personal property intended to be sold ultimately at retail. The sale of an item of tangible personal property for the purpose of incorporating it in or attaching it to real property must be considered as a sale of tangible personal property for a purpose other than for processing; the delivery of possession within the state of North Dakota of tangible personal property by a wholesaler or distributor to an out-of-state retailer who does not hold a North Dakota retail sales tax permit or to a person who by contract incorporates such tangible personal property into, or attaches it to, real property situated in another state may not be considered a taxable sale if such delivery of possession would not be treated as a taxable sale in that state. As used in this subsection, the word "consumer" includes any hospital, infirmary, sanatorium, nursing home, home for the aged, or similar institution that furnishes services to any patient or occupant. The sale of an item of tangible personal property to a person under a finance leasing agreement over the term of which the property will be substantially consumed must be considered a retail sale if the purchaser

elects to treat it as such by paying or causing the transferor to pay the sales tax thereon to the commissioner on or before the last day on which payments may be made without penalty as provided in section 57-39.2-12.

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, or tickets or admissions to places of amusement, entertainment, and athletic events, ~~including the playing of any machine for amusement or entertainment in response to the use of a coin,~~ or magazines, or other periodicals; 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, the furnishing of hotel, motel, or tourist court accommodations, the furnishing of tickets or admissions to any place of amusement, athletic event, or place of entertainment, ~~including the playing of any machine for amusement or entertainment in response to the use of a coin,~~ and sales of magazines and other periodicals. Provided, the words "magazines and other periodicals" as used in this subsection do not include newspapers nor magazines or periodicals that are furnished free by a nonprofit corporation or organization to its members or because of payment by its members of membership fees or dues.

<sup>165</sup> **SECTION 2. AMENDMENT.** Subsection 1 of section 57-39.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise expressly provided in subsection 2 for sales of mobile homes used for residential or business purposes, and except as otherwise expressly provided in this chapter, there is imposed a tax of five percent upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as provided in this section, within this state of the following to consumers or users:

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<sup>165</sup> Section 57-39.2-02.1 was also amended by section 3 of House Bill No. 1391, chapter 473.

- a. Tangible personal property, consisting of goods, wares, or merchandise, except mobile homes used for residential or business purposes and including bundled transactions consisting entirely of tangible personal property.
- b. The furnishing or service of communication services or steam other than steam used for processing agricultural products.
- c. Tickets or admissions to places of amusement or entertainment or athletic events, including amounts charged for participation in an amusement, entertainment, or athletic activity ~~and the playing of any machine for amusement or entertainment in response to the use of a coin. The tax imposed by this section applies only to eighty percent of the gross receipts collected from coin-operated amusement devices.~~
- d. Magazines and other periodicals.
- e. The leasing or renting of a hotel or motel room or tourist court accommodations.
- f. The leasing or renting of tangible personal property the transfer of title to which has not been subjected to a retail sales tax under this chapter or a use tax under chapter 57-40.2.
- g. Sale, lease, or rental of a computer and prewritten computer software, including prewritten computer software delivered electronically or by load and leave. For purposes of this subdivision:
  - (1) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.
  - (2) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.
  - (3) "Delivered electronically" means delivered from the seller to the purchaser by means other than tangible storage media.
  - (4) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
  - (5) "Load and leave" means delivery to the purchaser by use of a tangible storage media when the tangible storage media is not physically transferred to the purchaser.
  - (6) "Prewritten computer software" means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more "prewritten computer software" programs or prewritten portions thereof does not cause the combination to be other than "prewritten computer software". "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser.

If a person modifies or enhances "computer software" of which the person is not the author or creator, the person is deemed to be the author or creator only of such person's modifications or enhancements. "Prewritten computer software" or a prewritten portion thereof that is modified or enhanced to any degree, if such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains "prewritten computer software". However, if there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute "prewritten computer software".

- h. A mandatory computer software maintenance contract for prewritten computer software.
- i. An optional computer software maintenance contract for prewritten computer software that provides only software upgrades or updates or an optional computer software maintenance contract for prewritten computer software that is a bundled transaction and provides software upgrades or updates and support services.

<sup>166</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 coin-operated amusement or entertainment machines.

**SECTION 4. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2012.

Approved April 19, 2011  
Filed April 20, 2011

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<sup>166</sup> Section 57-39.2-04 was also amended by section 2 of House Bill No. 1046, chapter 486, section 1 of House Bill No. 1334, chapter 468, section 1 of House Bill No. 1424, chapter 467, section 13 of Senate Bill No. 2034, chapter 460, and section 1 of Senate Bill No. 2292, chapter 466.

## CHAPTER 466

### SENATE BILL NO. 2292

(Senators Hogue, Burckhard)  
(Representatives Bellew, Dosch, Metcalf)

AN ACT to amend and reenact subsection 4 of section 57-39.2-04 of the North Dakota Century Code, relating to the sales tax exemption for nonprofit entities; and to provide an effective date.

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

<sup>167</sup> **SECTION 1. AMENDMENT.** Subsection 4 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

4. a. Gross receipts from sales of tickets, or admissions to state, county, district, and local fairs, ~~and the gross,~~
- b. ~~Gross~~ receipts from educational, religious, or charitable activities, ~~unless the gross receipts from the event exceed five thousand dollars and the activities are held in a publicly owned facility,~~ when the entire amount of net receipts is expended for educational, religious, or charitable purposes ~~and the gross.~~ The exemption specified in this subsection does not apply to:
  - (1) Gross receipts from taxable sales in excess of ten thousand dollars per event if the activities are held in a publicly owned facility; or
  - (2) Gross receipts from activities if the seller competes with retailers by maintaining inventory, conducting retail sales on a regular basis from a permanent or seasonal location, or soliciting sales from a website prepared for or maintained by the seller.
- c. ~~Gross~~ receipts derived by any public school district if such receipts are expended in accordance with section 15.1-07-10 or 15.1-07-11. ~~This exemption does not apply to regular retail sales that are in direct competition with retailers.~~
- d. ~~Gross receipts from educational, religious, or charitable activities held in a publicly owned facility are exempt if the sponsoring organization is of a nonprofit music or dramatic arts organization that is exempt from federal income taxation and is organized and operated for the presentation of live public performances of musical or theatrical works on a regular basis.~~

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2011.

Approved April 19, 2011  
Filed April 19, 2011

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<sup>167</sup> Section 57-39.2-04 was also amended by section 2 of House Bill No. 1046, chapter 486, section 1 of House Bill No. 1334, chapter 468, section 3 of Senate Bill No. 2172, chapter 465, section 1 of House Bill No. 1424, chapter 467, and section 13 of Senate Bill No. 2034, chapter 460.

## CHAPTER 467

### HOUSE BILL NO. 1424

(Representatives Pollert, Weisz, Mueller)  
(Senators Klein, Miller, Wanzek)

AN ACT to amend and reenact subsection 8 of section 57-39.2-04, sections 57-39.2-12.1, 57-39.5-04, and 57-39.6-04, subsection 9 of section 57-40.2-04, and section 57-40.2-07.1 of the North Dakota Century Code, relating to compensation allowable to retailers for expenses associated with the collection, reporting, and remittance of state sales, use, and gross receipts taxes and the sales and use tax exemption for chemicals used for agricultural purposes; to provide an effective date; and to declare an emergency.

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

<sup>168</sup> **SECTION 1. AMENDMENT.** Subsection 8 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

8. Gross receipts from sales of ~~adjuvants required by the chemical label for application of a product warranty, agrichemical tank cleaners and foam markers,~~ commercial fertilizers, fungicides, seed treatments, inoculants and fumigants, herbicides, and insecticides to agricultural or commercial vegetable producers and commercial applicators; chemicals used to preserve agricultural crops being stored; and seeds, roots, bulbs, and small plants to commercial users or consumers for planting or transplanting for commercial vegetable gardens or agricultural purposes.

**SECTION 2. AMENDMENT.** Section 57-39.2-12.1 of the North Dakota Century Code is amended and reenacted as follows:

#### **57-39.2-12.1. Deduction to reimburse retailer for administrative expenses.**

1. A retailer ~~required~~ registered to report and ~~pay monthly~~ remit sales, use, or gross receipts tax imposed under section 57-39.2-12 ~~chapter 57-39.2, 57-39.5, 57-39.6, or 57-40.2~~ may deduct and retain one and one-half percent of the tax due. The aggregate of deductions allowed by this section and section 57-40.2-07.1 may not exceed ~~eighty-five~~ ninety-three dollars ~~and seventy-five cents per month~~ return. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 2 or 3 for the same period.
2. A certified service provider that contracts with retailers to calculate, collect, and remit tax due on behalf of retailers may deduct and retain from the tax remitted to the tax commissioner compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board effective June 1, 2006. The compensation provided in this subsection applies

<sup>168</sup> Section 57-39.2-04 was also amended by section 2 of House Bill No. 1046, chapter 486, section 1 of House Bill No. 1334, chapter 468, section 3 of Senate Bill No. 2172, chapter 465, section 13 of Senate Bill No. 2034, chapter 460, and section 1 of Senate Bill No. 2292, chapter 466.

only to tax remitted by certified service providers on behalf of retailers that are remote sellers registered to collect sales and use tax in this state under chapter 57-39.4. Certified service providers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 3 for the same period.

3. A retailer that is a remote seller registered to collect sales and use tax under chapter 57-39.4 and that uses a certified automated system to calculate, report, and remit tax due under chapters 57-39.2, 57-39.4, and 57-40.2 may deduct and retain compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board during its December 2006 meeting. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 2 for the same period.
4. For purposes of this section, "remote seller" means a retailer that does not have an adequate physical presence to establish nexus in this state for sales and use tax purposes.
5. Compensation may not be deducted and retained under this section unless the tax due is paid within the time limitations under section 57-39.2-12 or 57-40.2-07 or chapter 57-39.4.
6. The deduction allowed retailers or certified service providers by this section is to reimburse retailers directly or indirectly for expenses incurred in keeping records, preparing and filing returns, remitting the tax, and supplying information to the tax commissioner upon request.

**SECTION 3. AMENDMENT.** Section 57-39.5-04 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.5-04. Administration.**

The provisions of chapter 57-39.2 pertaining to administration of the retail sales tax, including provisions for refund, credits, retailer compensation, or adoption of rules, not in ~~compliance~~conflict with this chapter or federal law, govern the administration of the gross receipts tax imposed in this chapter.

**SECTION 4. AMENDMENT.** Section 57-39.6-04 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.6-04. Administration.**

The provisions of chapter 57-39.2, pertaining to administration of the retail sales tax, including provisions for refund, credits, retailer compensation, or adoption of rules, not in conflict with this chapter or federal law, govern the administration of the gross receipts tax imposed in this chapter.

**SECTION 5. AMENDMENT.** Subsection 9 of section 57-40.2-04 of the North Dakota Century Code is amended and reenacted as follows:

9. Adjuvants ~~required by the chemical label for application of a product warranty~~, agrichemical tank cleaners and foam markers, commercial fertilizers, fungicides, seed treatments, inoculants and fumigants, herbicides and insecticides used by agricultural or commercial vegetable producers and commercial applicators; chemicals used to preserve agricultural crops being

stored; and seeds, roots, bulbs, and small plants used by commercial users or consumers for planting or transplanting for commercial vegetable gardens or agricultural purposes.

**SECTION 6. AMENDMENT.** Section 57-40.2-07.1 of the North Dakota Century Code is amended and reenacted as follows:

**57-40.2-07.1. Deduction to reimburse retailer for administrative expenses.**

1. A retailer ~~required~~ registered to report and ~~pay monthly~~ remit sales, use, or gross receipts tax imposed under section 57-40.2-07 chapter 57-39.2, 57-39.5, 57-39.6, or 57-40.2 may deduct and retain one and one-half percent of the tax due. The aggregate of deductions allowed by this section and section 57-39.2-12.1 may not exceed ~~eighty-five~~ ninety-three dollars and seventy-five cents per month ~~return~~. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 2 or 3 for the same period.
2. A certified service provider that contracts with retailers to calculate, collect, and remit tax due on behalf of retailers may deduct and retain from the tax remitted to the tax commissioner compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board effective June 1, 2006. The compensation provided in this subsection applies only to tax remitted by certified service providers on behalf of retailers that are remote sellers registered to collect sales and use tax in this state under chapter 57-39.4. Certified service providers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 3 for the same period.
3. A retailer that is a remote seller registered to collect sales and use tax under chapter 57-39.4 and that uses a certified automated system to calculate, report, and remit tax due under chapters 57-39.2, 57-39.4, and 57-40.2 may deduct and retain compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board during its December 2006 meeting. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 2 for the same period.
4. For purposes of this section, "remote seller" means a retailer that does not have an adequate physical presence to establish nexus in this state for sales and use tax purposes.
5. Compensation may not be deducted and retained under this section unless the tax due is paid within the time limitations under section 57-39.2-12 or 57-40.2-07 or chapter 57-39.4.
6. The deduction allowed retailers or certified service providers by this section is to reimburse retailers directly or indirectly for expenses incurred in keeping records, preparing and filing returns, remitting the tax, and supplying information to the tax commissioner upon request.

**SECTION 7. EFFECTIVE DATE.** Sections 2, 3, 4, and 6 of this Act are effective for taxable events occurring after December 31, 2011.

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

Approved April 27, 2011  
Filed April 27, 2011



## CHAPTER 468

### HOUSE BILL NO. 1334

(Representative Belter)

AN ACT to create and enact a new subsection to section 57-39.2-04 of the North Dakota Century Code, relating to a sales tax exemption for memberships, admissions, and entrance fees of nonprofit 501(c)(7) social and recreation clubs; and to provide an effective date.

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

<sup>169</sup> **SECTION 1.** A new subsection to section 57-39.2-04 of the North Dakota Century Code is created and enacted as follows:

Gross receipts from memberships, admissions, and entrance fees to activities and events organized and operated by nonprofit social and recreation clubs organized under section 501(c)(7) of the Internal Revenue Code [26 U.S.C. 501(c)(7)] and operated solely by nonsalaried officers and staff.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2011.

Approved April 19, 2011  
Filed April 20, 2011

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<sup>169</sup> Section 57-39.2-04 was also amended by section 2 of House Bill No. 1046, chapter 486, section 3 of Senate Bill No. 2172, chapter 465, section 1 of House Bill No. 1424, chapter 467, section 13 of Senate Bill No. 2034, chapter 460, and section 1 of Senate Bill No. 2292, chapter 466.

## CHAPTER 469

### SENATE BILL NO. 2202

(Senators Klein, Hogue, Sorvaag)  
(Representatives Hatlestad, Heller, Streyle)

AN ACT to amend and reenact sections 57-39.2-04.5, 57-39.2-04.6, and 57-40.2-03.3 of the North Dakota Century Code, relating to the sales and use tax exemption for materials used in compressing, processing, gathering, or refining gas, the sales and use tax exemption for materials used in construction or expansion of an oil refinery, and the use tax on contractors; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 57-39.2-04.5 of the North Dakota Century Code is amended and reenacted as follows:

#### **57-39.2-04.5. Sales and use tax exemption for materials used in compressing, processing, gathering, or refining of gas.**

1. Gross receipts from sales of tangible personal property used to construct or expand a system used to compress, process, gather, or refine gas recovered from an oil or gas well in this state or used to expand or build a gas-processing facility 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, process, gather, or refine gas. Tangible personal property used to replace an existing system to compress, process, gather, or refine 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, processing, gathering, or refining system must receive from the tax commissioner a certificate that the tangible personal property used to construct or expand a system used to compress, process, gather, or refine gas recovered from an oil or gas well in this state or used to expand or build a gas-processing facility in this state which the owner intends to purchase qualifies for 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 ~~and~~ installed by a contractor subject to the tax imposed by this chapter, the owner of the gas compressing, processing, gathering, or refining system ~~must~~ may apply to the tax commissioner for a refund of ~~sales and use taxes paid by any contractor, subcontractor, or builder for which the sales or use is claimed as exempt under 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 times and in the manner directed by the tax commissioner and must include sufficient information to permit the tax commissioner to verify the sales and use taxes paid and the exempt status of the sale or use.

**SECTION 2. AMENDMENT.** Section 57-39.2-04.6 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.2-04.6. Sales and use tax exemption for materials used in construction or expansion of an oil refinery.**

1. Gross receipts from sales of tangible personal property used in expanding or constructing an oil refinery that has a nameplate capacity of processing at least five thousand barrels of oil per day in this state are exempt from taxes under this chapter.
2. ~~The~~To receive the exemption at the time of purchase, the owner of the tangible personal property~~oil refinery must apply to receive from the tax commissioner for a refund of sales and use taxes paid by any contractor, subcontractor, or builder for which the sales or use is claimed as exempt under this section~~a certificate that the tangible personal property used to construct or expand an oil refinery qualifying under this section which the owner intends to purchase 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 oil refinery may apply for a refund of the difference between the amount remitted by the contractor and the exemption imposed or allowed under this section. Application for a refund must be made at the times and in the manner directed by the tax commissioner and must include sufficient information to permit the tax commissioner to verify the sales and use taxes paid and the exempt status of the sale or use.
- ~~3-4.~~ This chapter and chapter 57-40.2 apply to the exemption under this section.

**SECTION 3. AMENDMENT.** Section 57-40.2-03.3 of the North Dakota Century Code is amended and reenacted as follows:

**57-40.2-03.3. Use tax on contractors.**

1. When a contractor or subcontractor uses tangible personal property in the performance of that person's contract, or to fulfill contract or subcontract obligations, whether the title to such property be in the contractor, subcontractor, contractee, subcontractee, or any other person, or whether the titleholder of such property would be subject to pay the sales or use tax, such contractor or subcontractor shall pay a use tax at the rate prescribed by section 57-40.2-02.1 measured by the purchase price or fair market value of such property, whichever is greater, unless such property has been previously subjected to a sales tax or use tax by this state, and the tax due thereon has been paid.
2. The provisions of this chapter pertaining to the administration of the tax imposed by section 57-40.2-02.1, not in conflict with the provisions of this section, govern the administration of the tax levied by this section.
3. The tax imposed by this section does not apply to medical equipment purchased as tangible personal property by a hospital or by a long-term care facility as defined in section 50-10.1-01 and subsequently installed by a contractor into such hospital or facility.

4. The tax imposed by this section does not apply to:
- a. Production equipment or tangible personal property as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.2; or
  - b. Machinery, equipment, or other tangible personal property used to construct an agricultural commodity processing facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.3 or 57-39.2-04.4; or
  - c. Tangible personal property used to construct or expand a system used to compress, process, gather, or refine gas recovered from an oil or gas well in this state or used to expand or build a gas-processing facility in this state as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.5; or
  - d. Tangible personal property used to construct to expand a qualifying oil refinery as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.6.

**SECTION 4. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2011.

Approved April 19, 2011  
Filed April 19, 2011

## CHAPTER 470

### SENATE BILL NO. 2171

(Senators Cook, Oehlke, O'Connell)  
(Representatives Froseth, Kempenich, Thoreson)

AN ACT to amend and reenact section 57-39.2-04.7 of the North Dakota Century Code, relating to sales and use tax exemption for equipment used in telecommunications infrastructure development; 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 57-39.2-04.7 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.2-04.7. (Effective through ~~June 30, 2011~~ December 31, 2012) Sales tax exemption for equipment used in telecommunications infrastructure development.**

1. Gross receipts from sales of tangible personal property used to construct or expand telecommunications service infrastructure in this state are exempt from taxes under this chapter. To be exempt, the tangible personal property must be incorporated into telecommunications service infrastructure owned by a telecommunications company.
2. To qualify for exemption at the time of purchase, a telecommunications company must receive a certificate from the commissioner stating that the property qualifies for the exemption. If a certificate is not received before the purchase or the purchase is made by a contractor, subcontractor, or builder, the telecommunications company must apply to the commissioner for a refund of sales and use taxes paid for which the exemption is claimed under this section. Application for a refund must be made at the times and in the manner directed by the commissioner and must include sufficient information to permit the commissioner to verify the sales and use taxes paid and the exempt status of the sale or use.

**SECTION 2. EFFECTIVE DATE - EXPIRATION DATE.** This Act is effective for taxable events occurring after June 30, 2011, and before January 1, 2013, and after that date is ineffective.

Approved April 26, 2011  
Filed April 26, 2011

## CHAPTER 471

### SENATE BILL NO. 2336

(Senators Wardner, Miller, O'Connell)  
(Representatives Belter, Headland, S. Meyer)

AN ACT to create and enact a new section to chapter 57-39.2 of the North Dakota Century Code, relating to a sales tax exemption for machinery or equipment used to produce coal from a new mine located in this state; and to provide an effective date.

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

**SECTION 1.** A new section to chapter 57-39.2 of the North Dakota Century Code is created and enacted as follows:

#### Sales tax exemption for machinery or equipment used to produce coal from a new mine.

1. Gross receipts from sales of machinery or equipment used to produce coal from a new mine located in this state are exempt from the tax imposed by this chapter. The exemption for each new mine under this section is limited to the first five million dollars of sales and use tax paid.
2. Purchase of replacement machinery or equipment is exempt if the capitalized investment in the new mine exceeds twenty million dollars. Purchases of repair or replacement parts for existing machinery or equipment are not exempt under this section.
3. The mine operator shall apply to the commissioner for a refund of sales and use taxes paid for which the exemption is claimed under this section. A refund claim may not exceed the limitation in subsection 1. Application for the refund must be made at the time and in the manner directed by the commissioner and must include sufficient information to verify the correctness of the refund claim.
4. For purposes of this section:
  - a. "Machinery or equipment" means machinery or equipment used directly to uncover, sever, crush, handle, or transport coal removed from the earth. "Machinery or equipment" includes draglines, excavators, rolling stock, conveyor equipment, reclamation equipment, and equipment to pulverize coal but does not include rail spurs, office buildings, workshops, or any component not used directly to uncover, sever, crush, handle, or transport coal removed from the earth.
  - b. "New mine" means an area permitted under chapter 38-14.1 by the public service commission after December 31, 2010.
  - c. "Produce coal" means mining operations to uncover, sever, crush, handle, or transport coal from its natural location under the earth's surface to the

mouth of the mine and all activities necessary and incidental to the reclamation of that location.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2011.

Approved April 26, 2011  
Filed April 26, 2011

## CHAPTER 472

### SENATE BILL NO. 2253

(Senators Olafson, Andrist, Dotzenrod)  
(Representative Froseth)

AN ACT to amend and reenact section 57-39.2-26.1 of the North Dakota Century Code, relating to the allocation of funds in the state aid distribution fund; to provide an effective date; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 57-39.2-26.1 of the North Dakota Century Code is amended and reenacted as follows:

#### **57-39.2-26.1. Allocation of revenues among political subdivisions.**

Notwithstanding any other provision of law, a portion of sales, gross receipts, use, and motor vehicle excise tax collections, equal to forty percent of an amount determined by multiplying the quotient of one percent divided by the general sales tax rate, that was in effect when the taxes were collected, times the net sales, gross receipts, use, and motor vehicle excise tax collections under chapters 57-39.2, 57-39.5, 57-39.6, 57-40.2, and 57-40.3 must be deposited by the state treasurer in the state aid distribution fund. The state tax commissioner shall certify to the state treasurer the portion of sales, gross receipts, use, and motor vehicle excise tax net revenues that must be deposited in the state aid distribution fund as determined under this section. Revenues deposited in the state aid distribution fund are provided as a standing and continuing appropriation and must be allocated as follows:

1. Fifty-three and seven-tenths percent of the revenues must be allocated to counties in the first month after each quarterly period as provided in this subsection.
  - a. Sixty-four percent of the amount must be allocated among the seventeen counties with the greatest population, in the following manner:
    - (1) Thirty-two percent of the amount must be allocated equally among the counties; and
    - (2) The remaining amount must be allocated based upon the proportion each such county's population bears to the total population of all such counties.
  - b. Thirty-six percent of the amount must be allocated among all counties, excluding the seventeen counties with the greatest population, in the following manner:
    - (1) Forty percent of the amount must be allocated equally among the counties; and



- (2) The remaining amount must be allocated based upon the proportion each such county's population bears to the total population of all such counties.

A county shall deposit all revenues received under this subsection in the county general fund. Each county shall reserve a portion of its allocation under this subsection for further distribution to, or expenditure on behalf of, townships, rural fire protection districts, rural ambulance districts, soil conservation districts, county recreation service districts, county hospital districts, the Garrison Diversion Conservancy District, the southwest water authority, and other taxing districts within the county, excluding school districts, cities, and taxing districts within cities. The share of the county allocation under this subsection to be distributed to a township must be equal to the percentage of the county share of state aid distribution fund allocations that township received during calendar year 1996. The governing boards of the county and township may agree to a different distribution.

2. Forty-six and three-tenths percent of the revenues must be allocated to cities in the first month after each quarterly period ~~as provided in this subsection~~ based upon the proportion each city's population bears to the total population of all cities.
  - a. ~~Nineteen and four tenths percent of the amount must be allocated among cities with a population of eighty thousand or more, based upon the proportion each city's population bears to the total population of all such cities.~~
  - b. ~~Thirty four and five tenths percent of the amount must be allocated among cities with a population of twenty thousand or more but fewer than eighty thousand, based upon the proportion each such city's population bears to the total population of all such cities.~~
  - e. ~~Sixteen percent of the amount must be allocated among cities with a population of ten thousand or more but fewer than twenty thousand, based upon the proportion each such city's population bears to the total population of all such cities.~~
  - d. ~~Four and nine-tenths percent of the amount must be allocated among cities with a population of five thousand or more but fewer than ten thousand, based upon the proportion each such city's population bears to the total population of all such cities.~~
  - e. ~~Thirteen and one tenth percent of the amount must be allocated among cities with a population of one thousand or more but fewer than five thousand, based upon the proportion each such city's population bears to the total population of all such cities.~~
  - f. ~~Six and one tenth percent of the amount must be allocated among cities with a population of five hundred or more but fewer than one thousand, based upon the proportion each such city's population bears to the total population of all such cities.~~
  - g. ~~Three and four-tenths percent of the amount must be allocated among cities with a population of two hundred or more but fewer than five~~

~~hundred, based upon the proportion each such city's population bears to the total population of all such cities.~~

- ~~h. Two and six tenths percent of the amount must be allocated among cities with a population of fewer than two hundred, based upon the proportion each such city's population bears to the total population of all such cities.~~

A city shall deposit all revenues received under this subsection in the city general fund. Each city shall reserve a portion of its allocation under this subsection for further distribution to, or expenditure on behalf of, park districts and other taxing districts within the city, excluding school districts. The share of the city allocation under this subsection to be distributed to a park district must be equal to the percentage of the city share of state aid distribution fund allocations that park district received during calendar year 1996, up to a maximum of thirty percent. The governing boards of the city and park district may agree to a different distribution.

**SECTION 2. EFFECTIVE DATE.** This Act becomes effective on July 1, 2011.

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

Approved April 26, 2011  
Filed April 26, 2011

## CHAPTER 473

### HOUSE BILL NO. 1391

(Representatives Drovdal, Hatlestad, Kaldor)  
(Senators Cook, Miller, Dotzenrod)

AN ACT to create and enact section 57-39.4-33.3 of the North Dakota Century Code, relating to prohibited replacement taxes; to amend and reenact subsection 2 of section 11-09.1-05, subsection 16 of section 40-05.1-06, subsection 1 of section 57-39.2-02.1, sections 57-39.4-01, 57-39.4-02, 57-39.4-03, and 57-39.4-04, subsections 1 and 3 of section 57-39.4-09, and sections 57-39.4-10, 57-39.4-11.1, 57-39.4-14, 57-39.4-14.1, 57-39.4-18, 57-39.4-19, 57-39.4-20, and 57-39.4-24 of the North Dakota Century Code, relating to the administration of the streamlined sales and use tax agreement; to repeal chapter 57-39.3 of the North Dakota Century Code, relating to fees in lieu of sales taxes; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 11-09.1-05 of the North Dakota Century Code is amended and reenacted as follows:

2. Control its finances and fiscal affairs; appropriate money for its purposes, and make payments of its debts and expenses; subject to the limitations of this section levy and collect property taxes, sales and use taxes, farm machinery gross receipts taxes, alcoholic beverage gross receipts taxes, motor vehicle fuels and special fuels taxes, motor vehicle registration fees, and special assessments for benefits conferred, for its public and proprietary functions, activities, operations, undertakings, and improvements; contract debts, borrow money, issue bonds, warrants, and other evidences of indebtedness; establish charges for any county or other services to the extent authorized by state law; and establish debt and mill levy limitations. Notwithstanding any authority granted under this chapter, all property must be assessed in a uniform manner as prescribed by the state board of equalization and the state supervisor of assessments and all taxable property must be taxed by the county at the same rate unless otherwise provided by law. A charter or ordinance or act of a governing body of a home rule county may not supersede any state law that determines what property or acts are subject to, or exempt from, ad valorem taxes. A charter or ordinance or act of the governing body of a home rule county may not supersede section 11-11-55.1 relating to the sixty percent petition requirement for improvements and of section 40-22-18 relating to the barring proceeding for improvement projects. After December 31, 2005, sales and use taxes, farm machinery gross receipts taxes, and alcoholic beverage gross receipts taxes levied under this chapter:
  - a. Must conform in all respects with regard to the taxable or exempt status of items under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 and may not be imposed at multiple rates with the exception of sales of fuel used to power motor vehicles, aircraft, locomotives, or watercraft, or to electricity, piped natural or artificial gas, or other heating fuels delivered by the seller

- or the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.
- b. May not be newly imposed or changed except to be effective on the first day of a calendar quarterly period after a minimum of ninety days' notice to the tax commissioner or, for purchases from printed catalogs, on the first day of a calendar quarter after a minimum of one hundred twenty days' notice to the seller.
  - c. May not be limited to apply to less than the full value of the transaction or item as determined for state sales and use tax, except for farm machinery gross receipts tax purposes.
  - d. Must be subject to collection by the tax commissioner under an agreement under section 57-01-02.1 and must be administered by the tax commissioner in accordance with the relevant provisions of chapter 57-39.2, including reporting and paying requirements, correction of errors, payment of refunds, and application of penalty and interest.

After December 31, 2005, any portion of a charter or any portion of an ordinance or act of a governing body of a home rule county passed pursuant to a charter which does not conform to the requirements of this subsection is invalid to the extent that it does not conform. The invalidity of a portion of a charter or ordinance or act of a governing body of a home rule county because it does not conform to this subsection does not affect the validity of any other portion of the charter or ordinance or act of a governing body of a home rule county or the eligibility for a refund under section 57-01-02.1. Any taxes imposed under this chapter on farm machinery, farm irrigation equipment, and farm machinery repair parts used exclusively for agricultural purposes, or on alcoholic beverages, which were in effect on December 31, 2005, become gross receipts taxes after December 31, 2005.

**SECTION 2. AMENDMENT.** Subsection 16 of section 40-05.1-06 of the North Dakota Century Code is amended and reenacted as follows:

16. To impose registration fees on motor vehicles, farm machinery gross receipts taxes, alcoholic beverage gross receipts taxes, or sales and use taxes in addition to any other taxes imposed by law. After December 31, 2005, sales and use taxes and gross receipts taxes levied under this chapter:
  - a. Must conform in all respects with regard to the taxable or exempt status of items under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 and may not be imposed at multiple rates with the exception of sales of fuel used to power motor vehicles, aircraft, locomotives, or watercraft, or to electricity, piped natural or artificial gas, or other heating fuels delivered by the seller or the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.
  - b. May not be newly imposed or changed except to be effective on the first day of a calendar quarterly period after a minimum of ninety days' notice to the tax commissioner or, for purchases from printed catalogs, on the first day of a calendar quarter after a minimum of one hundred twenty days' notice to the seller.

- c. May not be limited to apply to less than the full value of the transaction or item as determined for state sales and use tax purposes, except for farm machinery gross receipts tax.
- d. Must be subject to collection by the tax commissioner under an agreement under section 57-01-02.1 and must be administered by the tax commissioner in accordance with the relevant provisions of chapter 57-39.2, including reporting and paying requirements, correction of errors, payment of refunds, and application of penalty and interest.

<sup>170</sup> **SECTION 3. AMENDMENT.** Subsection 1 of section 57-39.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

- 1. Except as otherwise expressly provided in subsection 2 for sales of mobile homes used for residential or business purposes, and except as otherwise expressly provided in this chapter, there is imposed a tax of five percent upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as provided in this section, within this state of the following to consumers or users:
  - a. Tangible personal property, consisting of goods, wares, or merchandise, except mobile homes used for residential or business purposes and including bundled transactions consisting entirely of tangible personal property.
  - b. The furnishing or service of communication services including one-way and two-way telecommunications services or steam other than steam used for processing agricultural products.
  - c. Tickets or admissions to places of amusement or entertainment or athletic events, including amounts charged for participation in an amusement, entertainment, or athletic activity and the playing of any machine for amusement or entertainment in response to the use of a coin. The tax imposed by this section applies only to eighty percent of the gross receipts collected from coin-operated amusement devices.
  - d. Magazines and other periodicals.
  - e. The leasing or renting of a hotel or motel room or tourist court accommodations.
  - f. The leasing or renting of tangible personal property the transfer of title to which has not been subjected to a retail sales tax under this chapter or a use tax under chapter 57-40.2.
  - g. Sale, lease, or rental of a computer and prewritten computer software, including prewritten computer software delivered electronically or by load and leave. For purposes of this subdivision:
    - (1) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

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<sup>170</sup> Section 57-39.2-02.1 was also amended by section 2 of Senate Bill No. 2172, chapter 465.

- (2) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.
  - (3) "Delivered electronically" means delivered from the seller to the purchaser by means other than tangible storage media.
  - (4) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
  - (5) "Load and leave" means delivery to the purchaser by use of a tangible storage media when the tangible storage media is not physically transferred to the purchaser.
  - (6) "Prewritten computer software" means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more "prewritten computer software" programs or prewritten portions thereof does not cause the combination to be other than "prewritten computer software". "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. If a person modifies or enhances "computer software" of which the person is not the author or creator, the person is deemed to be the author or creator only of such person's modifications or enhancements. "Prewritten computer software" or a prewritten portion thereof that is modified or enhanced to any degree, if such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains "prewritten computer software". However, if there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute "prewritten computer software".
- h. A mandatory computer software maintenance contract for prewritten computer software.
  - i. An optional computer software maintenance contract for prewritten computer software that provides only software upgrades or updates or an optional computer software maintenance contract for prewritten computer software that is a bundled transaction and provides software upgrades or updates and support services.

**SECTION 4. AMENDMENT.** Section 57-39.4-01 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.4-01. Adoption of streamlined sales and use tax agreement.**

North Dakota adopts the streamlined sales and use tax agreement as adopted November 12, 2002, and as may be amended by the member states of the streamlined sales tax project. The entire agreement is adopted by reference with the exception of articles III and V, which are adopted as set out in this chapter.

**SECTION 5. AMENDMENT.** Section 57-39.4-02 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.4-02. (301) State level administration.**

1. Each member state shall provide state level administration of sales and use taxes subject to the agreement. The state level administration may be performed by a member state's tax commission, department of revenue, or any other single entity designated by state law. Sellers and purchasers are only required to register with, file returns with, and remit funds to the state level authority. ~~Each~~The state level authority of a member state shall provide for collection of any local taxes and distribution of them to the appropriate taxing jurisdictions. ~~Each member~~The state level authority shall conduct, or ~~authorize~~ others may be authorized to conduct on its behalf, subject to the provisions of subsection 2, all audits of the sellers ~~registered under the agreement and purchasers~~ for that state's tax and the tax of its local jurisdictions, ~~and~~. Except as provided in this chapter local jurisdictions shall not conduct independent sales or use tax audits of sellers ~~registered under the agreement and purchasers~~.
2. If authorized by statute, nothing in this section prohibits the state level authority from authorizing audits of taxpayers to be conducted or performed by others on behalf of the state level authority provided:
  - a. The person is conducting the audit for all taxes due and not only for taxes due to a specific local taxing jurisdiction;
  - b. The person is subject to the same confidentiality provisions and other protections afforded to a taxpayer as a person working for the state level authority;
  - c. Absent fraud, a refund claim filed subsequent to the audit that covers part of the audit period or mutual consent, the audit does not cover an audit period already conducted by the state level authority or another person acting on its behalf; and
  - d. The audit is subject to the same administrative and appeal procedures granted to audits conducted by the state level authority.

**SECTION 6. AMENDMENT.** Section 57-39.4-03 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.4-03. (302) State and local tax bases.**

~~Through December 31, 2005, if a member state has local jurisdictions that levy a sales or use tax, all local jurisdictions in the state shall have a common tax base. After December 31, 2005, the~~The tax base for local jurisdictions shall be identical to the state tax base unless otherwise prohibited by federal law. This section does not apply to sales or use taxes levied on fuel used to power motor vehicles, aircraft, locomotives, or watercraft, or to electricity, piped natural or artificial gas, or other fuels delivered by the seller and the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.

**SECTION 7. 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 on-line sales and use tax registration system in cooperation with the other member states. Under this system:

1. A seller registering under the agreement ~~is~~shall be registered in each of the member states.
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.
3. The member states agree not to require the payment of any registration fees or other charges for a seller to register in a state in which the seller has no legal requirement to register.
- ~~3-4.~~ A written signature from the seller is not required.
- ~~4-5.~~ An agent may register a seller under uniform procedures adopted by the member states.
- ~~5-6.~~ 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 registered under the agreement shall 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 governing board shall provide to the seller information regarding the requirements and options for filing a simplified electronic return and for filing remittances in any member state. Member states 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 states. 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 8. AMENDMENT.** Subsections 1 and 3 of section 57-39.4-09 of the North Dakota Century Code are amended and reenacted as follows:

1. No member state shall have multiple state sales and use tax rates on items of personal property or services, except that a member state may impose a single additional rate, which may be zero, on food and food ingredients and drugs as defined by state law ~~pursuant to~~ under the agreement. In addition, if federal law prohibits the imposition of local tax on a product that is subject to state tax, the state may impose an additional rate on the product, provided the rate achieves tax parity for similar products.
3. The provisions of this section do not apply to sales or use taxes levied on fuel used to power motor vehicles, aircraft, locomotives, or watercraft, or to electricity, piped natural or artificial gas or other heating fuels delivered by the seller, or the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.

**SECTION 9. AMENDMENT.** Section 57-39.4-10 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.4-10. (309) Application of general sourcing rules and exclusions from the rules.**

1. Each member state shall agree to require sellers to source the retail sale of a product in accordance with section 57-39.4-11 ~~or 57-39.4-11.1. The~~ Except as provided in section 57-39.4-11.1, the provisions of section 57-39.4-11 apply to all sales regardless of the characterization of a product as tangible personal property, a digital good, or a service. ~~The~~ Except as otherwise provided in the agreement, the provisions of section ~~sections~~ 57-39.4-11 and 57-39.4-11.1 only apply to determine a seller's obligation to pay or collect and remit a sales or use tax with respect to the seller's retail sale of a product. These provisions do not affect the obligation of a purchaser or lessee to remit tax on the use of the product to the taxing jurisdictions of that use.
2. ~~Section~~ Sections 57-39.4-11 ~~does~~ and 57-39.4-11.1 do not apply to sales or use taxes levied on the following:
  - a. The retail sale or transfer of watercraft, modular homes, manufactured homes, or mobile homes. These items must be sourced according to the requirements of each member state.
  - b. The retail sale, excluding lease or rental, of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment, as defined in subsection 4 of section 57-39.4-11. The retail sale of these items shall be sourced according to the requirements of each member state, and the lease or rental of these items must be sourced according to subsection 3 of section 57-39.4-11.
  - c. Telecommunications services and ancillary services, as set out in section 57-39.4-16, and internet access service shall be sourced in accordance with section 57-39.4-15.
  - d. Florist sales as defined by each member state. These sales must be sourced according to the requirements of each member state.

- e. The retail sale of products and services qualifying as direct mail must be sourced in accordance with section 57-39.4-14.

**SECTION 10. AMENDMENT.** Section 57-39.4-11.1 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.4-11.1. (310.1) Election for origin-based sourcing.**

1. A member state that has local jurisdictions that levy or receive sales or use taxes may elect to source the retail sale of tangible personal property and digital goods under the provisions of this section in lieu of the provisions of subdivisions b, c, and d of subsection 1 of section 57-39.4-11 if the state complies with subsection 3 of this section and the only exception to section 57-39.4-11 is in subsection 2 of this section.
2. A member state may source retail sales, excluding lease or rental, of tangible personal property or digital goods to the location where the order is received by the seller if:
  - a. The order is received in the same state by the seller where receipt of the product by the purchaser or the purchaser's designated donee occurs;
  - b. The location where receipt of the product by the purchaser occurs is determined under subdivisions b, c, and d of subsection 1 of section 57-39.4-11; and
  - c. At the time the order is received, the recordkeeping system of the seller used to calculate the proper amount of sales or use tax to be imposed captures the location where the order is received.
3. A member state electing to source sales under this section shall comply with all of the following:
  - a. When the location where the order is received by the seller and the location where the receipt of the product by the purchaser or the purchaser's designated donee occurs as determined under subdivisions b, c, and d of subsection 1 of section 57-39.4-11 are in different states, the sale must be sourced under the provisions of section 57-39.4-11.
  - b. When the productsale is sourced under this section to the location where the order is received by the seller, only the sales tax for the location where the order is received by the seller may be levied. No additional sales or use tax based on the location where the product is delivered to the purchaser may be levied on that sale. The purchaser shall not be entitled to any refund if the combined state and local rate at the location where the product is received by the purchaser is lower than the rate where the order is received by the seller.
  - c. A member state may not require a seller to use a recordkeeping system that captures the location where the order is received to calculate the proper amount of sales or use tax to be imposed.
  - d. A purchaser shall not have an additional liability to the state for tax, penalty, or interest on a sale for which the purchaser remits tax to the seller in the amount invoiced by the seller if the invoice amount is calculated at either the rate applicable to the location where receipt by the

- purchaser occurs or at the rate applicable to the location where the order is received by the seller. A purchaser may rely on a written representation by the seller as to the location where the order for the sale was received by the seller. When the purchaser does not have a written representation by the seller as to the location where the order for the sale was received by the seller, the purchaser may use the seller's business address that is available from the purchaser's business records maintained in the ordinary course of the purchaser's business to determine the rate applicable to the location where the order was received.
- e. The location where the order is received by or on behalf of the seller means the physical location of a seller or third party such as an established outlet, office location, or automated order receipt system operated by or on behalf of the seller, where an order is initially received by or on behalf of the seller and not where the order may be subsequently accepted, completed, or fulfilled. An order is received when all of the information from the purchaser necessary to determine whether the order can be accepted has been received by or on behalf of the seller. The location from which a product is shipped must not be used in determining the location where the order is received by the seller.
- f. A member state must provide for direct pay permits under section 57-39.4-27 and the requirements of this subsection. Purchasers that remit sales and use tax under a direct pay permit shall remit tax at the rate in effect for the location where receipt of the product by the purchaser occurs or the product is first used as determined by state law. A member state may establish reasonable thresholds at which the member state will consider direct pay applications, provided the threshold must be based upon purchases with no distinction between taxable and nontaxable purchases. The member state shall establish a process for application for a direct pay permit as provided in this chapter. The member state may require the direct pay permit applicant to demonstrate:
- (1) An ability to comply with the sales and use tax laws of the state;
  - (2) A business purpose for seeking a direct pay permit and how the permit will benefit tax compliance; and
  - (3) Proof of good standing under the tax laws of the state. The member state shall review all permit applications in a timely manner. Notification of authorization or denial must be received by applicants within one hundred twenty days of application. The member state may not limit direct pay permit applicants to businesses engaged in manufacturing or businesses that do not know the ultimate use of the product at the time of the purchase.
- g. When taxable services are sold with tangible personal property or digital products under a single contract or in the same transaction, are billed on the same billing statement, and because of the application of this section, would be sourced to different jurisdictions, a member state shall elect either origin sourcing or destination sourcing to determine a single situs for that transaction. The member state election is required until the governing board adopts a uniform methodology to address these sales.

- h. A member state that elects to source the sale of tangible personal property and digital goods under the provisions of this section shall inform the governing board of the election.
4. Compliance with the provisions of this section satisfies a state's eligibility for membership in this agreement as follows:
  - a. If a state is in substantial compliance with the provisions of this agreement other than sourcing of sales of tangible personal property and digital goods as provided in section 57-39.4-11, and elects to source sales of tangible personal property and digital goods under this section, the state may become an associate member state in the same manner as provided for states to become full member states under article VIII of the agreement.
  - b. ~~On or after January 1, 2010, a~~ state that becomes an associate member state under this subsection shall automatically become a full member state, provided that at least five states which are not full member states on December 31, 2007, are determined to be in substantial compliance with the provisions of the agreement other than sourcing sales of tangible personal property and digital goods under section 57-39.4-11, and the state has notified the governing board of an election under subdivision h of subsection 3 ~~of this section~~ to source sales under this section and has been found to be in substantial compliance with the provisions of this section.
  - c. ~~This section shall be fully effective for all purposes on or after January 1, 2010, provided at least five states which are not full member states on December 31, 2007, have been found to be in substantial compliance with the provisions of the agreement other than sourcing sales of tangible personal property and digital goods under section 57-39.4-11 and have notified the governing board of an election under subdivision h of subsection 3 of this section to source sales under this section and have been found to be in substantial compliance with the provisions of this section. States electing to source sales under this section after that time may become full member states if all other requirements for membership are satisfied.~~

**SECTION 11. AMENDMENT.** Section 57-39.4-14 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.4-14. (313) Direct mail sourcing.**

1. ~~Notwithstanding section 57-39.4-11, a purchaser of direct mail that is not a holder of a direct pay permit shall provide to the seller in conjunction with the purchase either a direct mail form or information to show the jurisdictions to which the direct mail is delivered to recipients.~~
  - a. ~~Upon receipt of the direct mail form, the seller is relieved of all obligations to collect, pay, or remit the applicable tax and the purchaser is obligated to pay or remit the applicable tax on a direct pay basis. A direct mail form shall remain in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.~~
  - b. ~~Upon receipt of information from the purchaser showing the jurisdictions to which the direct mail is delivered to recipients, the seller shall collect the~~

- ~~tax according to the delivery information provided by the purchaser. In the absence of bad faith, the seller is relieved of any further obligation to collect tax on any transaction in which the seller has collected tax pursuant to the delivery information provided by the purchaser.~~
- ~~2. If the purchaser of direct mail does not have a direct pay permit and does not provide the seller with either a direct mail form or delivery information, as required by subsection 1, the seller shall collect the tax according to subdivision e of subsection 1 of section 57-39.4-11. Nothing in this subsection shall limit a purchaser's obligation for sales or use tax to any state to which the direct mail is delivered.~~
  3. If a purchaser of direct mail provides the seller with documentation of direct pay authority, the purchaser shall not be required to provide a direct mail form or delivery information to the seller. For purposes of this section:
    - a. "Advertising and promotional direct mail" means:
      - (1) Printed material that meets the definition of direct mail, in appendix C, part I of the agreement; and
      - (2) The primary purpose of which is to attract public attention to a product, person, business, or organization, or to attempt to sell, popularize, or secure financial support for a product, person, business, or organization. As used in this subsection, the word "product" means tangible personal property, a product transferred electronically, or a service.
    - b. "Other direct mail" means any direct mail that is not advertising and promotional direct mail regardless of whether advertising and promotional direct mail is included in the same mailing. The term includes:
      - (1) Transactional direct mail that contains personal information specific to the addressee, including invoices, bills, statements of account, and payroll advices;
      - (2) Any legally required mailings, including privacy notices, tax reports, and stockholder reports; and
      - (3) Other nonpromotional direct mail delivered to existing or former shareholders, customers, employees, or agents, including newsletters and informational pieces.

Other direct mail does not include the development of billing information or the provision of any data processing service that is more than incidental.
  2. Notwithstanding sections 57-39.4-11 and 57-39.4-11.1, the following provisions apply to sales of advertising and promotional direct mail:
    - a. A purchaser of advertising and promotional direct mail may provide the seller with either:
      - (1) A direct pay permit;



4. a. This section applies to a transaction characterized under state law as the sale of services only if the service is an integral part of the production and distribution of printed material that meets the definition of direct mail.
- b. This section does not apply to any transaction that includes the development of billing information or the provision of any data processing service that is more than incidental regardless of whether advertising and promotional direct mail is included in the same mailing.
- c. If a transaction is a "bundled transaction" that includes advertising and promotional direct mail, this section shall apply only if the primary purpose of the transaction is the sale of products or services that meet the definition of advertising and promotional direct mail.
- d. Nothing in this section shall limit any purchaser's:
- (1) Obligation for sales or use tax to any state to which the direct mail is delivered;
  - (2) Right under local, state, federal, or constitutional law, to a credit for sales or use taxes legally due and paid to other jurisdictions; or
  - (3) Right to a refund of sales or use taxes overpaid to any jurisdiction.
- e. This section applies for purposes of uniformly sourcing direct mail transactions and does not impose requirements on states regarding the taxation of products that meet the definition of direct mail or to the application of sales for resale or other exemptions.

**SECTION 12. AMENDMENT.** Section 57-39.4-14.1 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.4-14.1. (313.1) Election for origin-based direct mail sourcing.**

1. Notwithstanding sections 57-39.4-11, 57-39.4-11.1, and 57-39.4-14, a member state may elect to source the sale of all direct mail delivered or distributed from a location within the state and delivered or distributed to a location within the state under this section.
2. If the purchaser provides the seller with a direct pay permit or ~~an exemption certificate claiming direct mail~~ a streamlined sales and use tax agreement certificate of exemption claiming direct mail or other written statement approved, authorized, or accepted by the state, the seller, in the absence of bad faith, is relieved of all obligations to collect, pay, or remit the applicable tax and then on any transaction involving direct mail. The purchaser is obligated to pay or remit the ~~must report and pay any applicable tax on a direct pay basis. An exemption certificate claiming direct mail~~ due. A streamlined sales and use tax agreement certificate of exemption claiming direct mail shall remain in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.
3. Except as provided in ~~subsections~~ subsections 2 and this subsection, 3, and 4, the seller shall collect the tax according to subdivision e of subsection 1 of section 57-39.4-11. To the extent the seller knows that a portion of the sale of direct mail will be delivered or distributed to a location in another state, the seller shall collect the tax on that portion according to section 57-39.4-14.

4. Notwithstanding subsection 3, a seller may elect to use the provisions of section 57-39.4-14 to source all sales of advertising and promotional direct mail.
5. Nothing in this section limits a purchaser's obligation for sales or use tax to any state to which the direct mail is delivered, except that a purchaser whose direct mail is sourced under subsection 3 shall owe no additional sales or use tax to that state based on where the purchaser uses or delivers the direct mail in the state.
- ~~5-6.~~ A member state that elects to source the sale of direct mail under the provisions of this section shall inform the governing board in writing at least sixty days prior to the beginning of the calendar quarter ~~such~~this election begins.

**SECTION 13. AMENDMENT.** Section 57-39.4-18 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.4-18. (317) Administration of exemptions.**

1. Each member state shall observe the following provisions when a purchaser claims an exemption:
  - a. The seller shall obtain identifying information of the purchaser and the reason for claiming a tax exemption at the time of the purchase as determined by the governing board.
  - b. A purchaser is not required to provide a signature to claim an exemption from tax unless a paper exemption certificate is used.
  - c. The seller shall use the standard form for claiming an exemption electronically as adopted by the governing board.
  - d. The seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurred.
  - e. A member state may utilize a system in which the purchaser exempt from the payment of the tax is issued an identification number that shall be presented to the seller at the time of the sale.
  - f. The seller shall maintain proper records of exempt transactions and provide them to a member state when requested.
  - g. A member state shall administer use-based and entity-based exemptions when practicable through a direct pay permit, an exemption certificate, or another means that does not burden sellers.
  - h. In the case of drop shipment sales, member states must allow a third-party vendor, drop shipper, to claim a resale exemption based on an exemption certificate by its customer or reseller or any other acceptable information available to the third-party vendor evidencing qualification for a resale exemption, regardless of whether the customer or reseller is registered to collect and remit sales and use tax in the state where the sale is sourced.
2. Each member state shall relieve sellers that follow the requirements of this section from the tax otherwise applicable if it is determined that the purchaser



improperly claimed an exemption and to hold the purchaser liable for the nonpayment of tax. This relief from liability does not apply to a seller who fraudulently fails to collect the tax; to a seller who solicits purchasers to participate in the unlawful claim of an exemption; to a seller who accepts an exemption certificate when the purchaser claims an entity-based exemption when the subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller and the state in which that location resides provides an exemption certificate that clearly and affirmatively indicates ~~graying out exemption reason types on the uniform form and posting it on a state's web site is an indicator~~ that the claimed exemption is not available in that state. Graying out exemption reason types on the uniform form and posting it on a state's website is an indicator.

3. Each state shall relieve a seller of the tax otherwise applicable if the seller obtains a fully completed exemption certificate or captures the relevant data elements required under the agreement within ninety days subsequent to the date of sale. A member state may provide for a period longer than ninety days for the seller to obtain the necessary information.
- ~~a-4.~~ If the seller has not obtained an exemption certificate or all relevant data elements as provided by this section, a member state shall provide the seller ~~may, within~~with one hundred twenty days subsequent to a request for substantiation by a member state, ~~to either prove that the transaction was not subject to tax by other means or obtain a:~~
  - a. A fully completed exemption certificate from the purchaser, taken in good faith. For purposes of this section, member states may continue to apply their own standards of good faith until such time as a uniform standard for good faith is defined in the agreement which means that the seller obtain a certificate that claims an exemption that was statutorily available on the date of the transaction in the jurisdiction where the transaction is sourced, could be applicable to the item being purchased, and is reasonable for the purchaser's type of business; or
  - b. Other information establishing that the transaction was not subject to the tax. A member state may provide for a period longer than one hundred twenty days for sellers to obtain the necessary information.
  - c. If the seller obtains the information described in this subsection, the member state shall relieve the seller of any liability for the tax on the transaction unless it is discovered through the audit process that the seller had knowledge or had reason to know at the time such information was provided that the information relating to the exemption claimed was materially false or the seller otherwise knowingly participated in activity intended to purposefully evade the tax that is properly due on the transaction. The state must establish that the seller had knowledge or had reason to know at the time the information was provided that the information was materially false.
- ~~b-5.~~ Nothing in this section shall affect the ability of member states to require purchasers to update exemption certificate information or to reapply with the state to claim certain exemptions.

- ~~e.6. Notwithstanding the aforementioned, each~~ Each member state shall relieve a seller of the tax otherwise applicable if it obtains a blanket exemption certificate ~~for~~ from a purchaser with which the seller has a recurring business relationship. ~~States~~ Notwithstanding the provisions of subsection 5, a member state may not request from the seller renewal of blanket certificates or updates of exemption certificate information or data elements when there is a recurring business relationship between the buyer and seller. For purposes of this section, a recurring business relationship exists when a period of no more than twelve months elapses between sales transactions.
7. Each state shall post on its website the uniform paper exemption certificate, streamlined sales and use tax exemption certificate, as revised and adopted by the governing board, with any applicable graying out of nonapplicable exemption types under subsection 2.

**SECTION 14. 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 ~~one~~ a single tax return for each taxing period for each seller be filed for the member state ~~and 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. ~~Allow any model 1, model 2, or model 3 seller to submit its sales and use tax returns in a simplified format that does not include more data fields than permitted by the governing board. A member state may require additional informational returns to be submitted not more frequently than every six months under a staggered system developed by the governing board. 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 a SER in all member states 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. 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 the part 2 of 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 a SER in all member states other than states for which they have indicated that they anticipate making no sales. These sellers shall file part 1 of the SER every month for all states in which they anticipate making sales. 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 a 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 a 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 member state shall allow sellers not registered under the agreement that are registered in the state to file a 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 a SER to give at least three months' notice of the seller's intent to discontinue filing a SER.

4. Allow any seller that is registered under the agreement, which does not have a legal requirement to register in the member state, and is not a model 1, model 2, or model 3 seller, to submit its sales and use tax returns as follows:

a. Upon registration, a member state shall provide to the seller the returns required by that state.

b. A member state may require a seller to file a return any time within one year of the month of initial registration and future returns may be required on an annual basis in succeeding years.

c. In addition to the returns required in subdivision b, a member state may require sellers to submit returns in the month following any month in which they have accumulated state and local tax funds for the state in the amount of one thousand dollars or more.

d. Participate with other member states in developing a more uniform sales and use tax return that, when completed, would be available to all sellers.

e. Require, at each member state's discretion, all model 1, model 2, and model 3 sellers to file returns electronically. It is the intent of the member states that all member states have the capability of receiving electronically filed returns by January 1, 2004. 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 a standardized transmission process to allow 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. 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. Nothing in this section shall prohibit a state from allowing additional return options or the filing of returns less frequently.

**SECTION 15. AMENDMENT.** Section 57-39.4-20 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.4-20. (319) Uniform rules for remittance of funds.**

Each member state shall:

1. Require only one remittance for each return except as provided in this subsection. If any additional remittance is required, it may only be required from sellers that collect more than thirty thousand dollars in sales and use taxes in the member state during the preceding calendar year as provided ~~herein in the agreement~~. The state shall allow the amount of any additional remittance to be determined through a calculation method rather than actual collections. Any additional remittances shall not require the filing of an additional return.
2. Require, at each member state's discretion, all remittances ~~from sellers under model 1, model 2, and model 3~~ in payment of taxes reported on the approved simplified return format to be remitted electronically.
3. Allow for electronic payments by all remitters by both automated clearinghouse credit and automated clearinghouse debit.
4. Provide an alternative method for making same day payments if an electronic funds transfer fails.
5. a. Provide that if a due date for a payment falls on a Saturday, Sunday, or legal banking holiday in a member state, the taxes are payment, including any related payment voucher information, is due to that state on the next succeeding business day.

- b. Additionally, if the federal reserve bank is closed on a due date that prohibits a person from being able to make a payment by automated clearinghouse debit or credit, that payment shall be accepted as timely if made on the next day the federal reserve bank is open.
6. Require that any data that accompanies a remittance be formatted using uniform tax type and payment type codes approved by the governing board.
7. Adopt a standardized transmission process approved by the governing board that allows for the remittance in a SER of a single bulk payment for taxes reported on multiple SERs by affiliated entities, certified service providers, or preparers. Each state shall comply with this provision no later than two years after the governing board approves such a standardized transmission process.

**SECTION 16. AMENDMENT.** Section 57-39.4-24 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.4-24. (323) Caps and thresholds.**

1. ~~Each~~No member state shall~~;~~may
- a. ~~Not~~ have caps or thresholds on the application of state sales or use tax rates or exemptions that are based on the value of the transaction or item after December 31, 2005. ~~A member state may continue to have caps and thresholds until that date.~~
- b. ~~Not~~or have caps that are based on the application of the rates unless the member state assumes the administrative responsibility in a manner that places no additional burden on the retailer.
2. ~~Each~~No member state that has local jurisdictions that levy a sales or use tax shall ~~not~~may place caps or thresholds on the application of local rates or use tax rates or exemptions that are based on the value of the transaction or item after December 31, 2005. ~~A member state may continue to have caps and thresholds until that date.~~
3. The provisions of this section do not apply to sales or use taxes levied on the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes or to instances when the burden of administration has been shifted from the retailer.
4. For states that have a cap or threshold on clothing before January 1, 2006, the provisions of this section do not apply to sales or use tax thresholds for exemptions that are based on the value of "essential clothing" except as provided in the library of definitions.

**SECTION 17.** Section 57-39.4-33.3 of the North Dakota Century Code is created and enacted as follows:

**57-39.4-33.3. (334) Replacement tax prohibited.**

No state may have a prohibited replacement tax on any product defined in part II or part III(B) of the library of definitions which has the effect of avoiding the intent of this agreement.

**SECTION 18. REPEAL.** Chapter 57-39.3 of the North Dakota Century Code is repealed.

**SECTION 19. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2011.

Approved April 11, 2011  
Filed April 11, 2011

## CHAPTER 474

### HOUSE BILL NO. 1153

(Representatives Ruby, Maragos, Delmore)  
(Senators Hogue, Larsen, G. Lee)

AN ACT to amend and reenact subsection 5 of section 57-40.3-04 of the North Dakota Century Code, relating to exemptions from motor vehicle excise tax.

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

<sup>171</sup> **SECTION 1. AMENDMENT.** Subsection 5 of section 57-40.3-04 of the North Dakota Century Code is amended and reenacted as follows:

5. a. A motor vehicle acquired by inheritance from, by bequest of, or operation of a trust created by a decedent who owned it;
- b. The transfer of a motor vehicle that was previously titled or licensed in the name of an individual or in the names of two or more joint tenants and subsequently transferred without monetary consideration to one or more joint tenants, including a transfer into a trust in which one or more of the joint tenants is beneficiary or trustee;
- c. The transfer of a motor vehicle by way of gift between a husband and wife, parent and child, or brothers and sisters, including a transfer into a trust in which the trustor and beneficiary occupy one of these relationships;
- d. The transfer of a motor vehicle without monetary consideration into a trust in which the beneficiary is the person in whose name the motor vehicle was previously titled or licensed;
- e. The transfer of a motor vehicle to reflect a new name of the owner caused by a business reorganization in which the ownership of the reorganized business remains in the same person or persons as ~~prior to~~before the reorganization, ~~but only~~ if the title transfer is completed within one hundred eighty days from the effective date of the reorganization; ~~and~~
- f. The transfer of a motor vehicle previously transferred under subdivision e which returns ownership to the previous owner: and
- g. The transfer of a motor vehicle without monetary consideration from a revocable living trust to the trustor or to the spouse, child, or sibling of the trustor.

Approved March 14, 2011  
Filed March 14, 2011

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<sup>171</sup> Section 57-40.3-04 was also amended by section 5 of Senate Bill No. 2207, chapter 268, and section 4 of House Bill No. 1217, chapter 447.



## CHAPTER 475

### HOUSE BILL NO. 1157

(Representatives Maragos, Heilman, Klein)  
(Senators Krebsbach, Sorvaag)

AN ACT to create and enact a new subsection to section 57-40.5-03 of the North Dakota Century Code, relating to an exemption from aircraft excise tax for aircraft acquired by an aviation museum; and to provide an effective date.

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

**SECTION 1.** A new subsection to section 57-40.5-03 of the North Dakota Century Code is created and enacted as follows:

Aircraft acquired by an aviation museum located in this state that is exempt from federal income taxation under section 501(c)(3) of the United States Internal Revenue Code [26 U.S.C. 501(c)(3)]. For purposes of this subsection, the term "acquired" has the meaning as provided in section 57-40.5-01. Any aviation museum acquiring an aircraft under this subsection shall comply with sections 57-40.5-04 and 57-40.5-05. The aircraft may not be used for commercial activities. For purposes of this subsection, commercial activities do not include activities for which a fee is charged when the proceeds are used for the benefit of the aviation museum.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2011.

Approved March 28, 2011  
Filed March 28, 2011

## CHAPTER 476

### HOUSE BILL NO. 1045

(Legislative Management)  
(Public Safety and Transportation Committee)

AN ACT to amend and reenact sections 57-40.6-01 and 57-40.6-10 of the North Dakota Century Code, relating to definitions and standards and guidelines for emergency services communication systems.

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

**SECTION 1. AMENDMENT.** Section 57-40.6-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **57-40.6-01. Definitions.**

In this chapter, unless the context or ~~subject matter~~ otherwise requires:

1. "Active prepaid wireless service" means a prepaid wireless service that has been used by the customer during the month to complete a telephone call for which the customer's card or balance was decremented.
2. "Assessed communications service" means a software service, communication connection, cable or broadband transport facilities, or a combination of these facilities, between a billed retail end user and a service provider's network that provides the end user, upon dialing 911, access to a public safety answering point through a permissible interconnection to the dedicated 911 network. The term includes telephone exchange access service, wireless service, active prepaid wireless service, and voice over internet protocol service.
3. "Automated notification system" means that portion of a telecommunications system that provides rapid notice of emergency situations to the public.
4. "Communication connection" means a telephone access line, wireless access line, unique voice over internet protocol service connection, or functional equivalent uniquely identifiable by a number, internet address, or other designation.
5. "Emergency services communication system" means a statewide, countywide, or citywide radio system, land lines communication network, wireless service network, or enhanced 911 (E911) telephone system, which provides rapid public access for coordinated dispatching of services, personnel, equipment, and facilities for law enforcement, fire, medical, or other emergency services.
6. "FCC order" means federal communications commission order 94-102 [961 Federal Register 40348] and any other FCC order that affects the provision of wireless enhanced 911 service.
7. "Prepaid wireless service" means wireless service that is activated in advance by payment for a finite dollar amount of service or for a finite set of minutes

that terminates either upon use by a customer and delivery by the wireless provider of an agreed-upon amount of service corresponding to the total dollar amount paid in advance or within a certain period of time following the initial purchase or activation, unless the customer makes additional payments.

8. "Public safety answering point" or "PSAP" means a communications facility or combination of facilities operated on a twenty-four-hour basis which first receives 911 calls from persons in a 911 service area and which, as appropriate, may directly dispatch public safety services or extend, transfer, or relay 911 calls to appropriate public safety agencies.
9. "Public safety answering point service area" means the geographic area for which a public safety answering point has dispatch and emergency communications responsibility.
10. "Public safety telecommunicator" means an individual whose primary full-time or part-time duties are receiving, processing, and transmitting public safety information received through an emergency services communication system.
11. "Subscriber service address" means, for purposes of wire line subscribers, the address where the telephone subscriber's wire line telephone device is used and, for purposes of wireless subscribers, the place of primary use, as that term is defined in section 57-34.1-02.
- ~~40-12.~~ "Telephone access line" means the principal access to the telephone company's switched network, including an outward dialed trunk or access register.
- ~~44-13.~~ "Telephone exchange access service" means service to any wire line telephone access line identified by a unique telephone number that provides local wire line access to the telecommunications network to a service subscriber and which enables the subscriber to access the emergency services communications system by dialing the digits 9-1-1 on the subscriber's telephone device.
- ~~42-14.~~ "Unpublished" means information that is not published or available from directory assistance.
- ~~43-15.~~ "Voice over internet protocol service" means a service that enables real-time two-way voice communications; requires a broadband connection from the user's location; requires internet protocol-compatible customer premises equipment; and permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.
- ~~44-16.~~ "Wireless access line" means each active wireless and prepaid wireless telephone number assigned to a commercial mobile radio service subscriber, including end users of resellers.
- ~~45-17.~~ "Wireless enhanced 911 service" means the service required to be provided by wireless service providers pursuant to the FCC order.
- ~~46-18.~~ "Wireless service" means commercial mobile radio service as defined in 47 U.S.C. 332(d)(1) and includes:

- a. Services commonly referred to as wireless; and
- b. Services provided by any wireless real-time two-way voice communication device, including radio-telephone communications used in:
  - (1) Cellular telephone service;
  - (2) Personal communications service; or
  - (3) The functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, personal communications service, or a network radio access line.

~~47-19.~~ "Wireless service provider" means any entity authorized by the federal communications commission to provide wireless service within ~~the~~this state of ~~North Dakota.~~

<sup>172</sup> **SECTION 2. AMENDMENT.** Section 57-40.6-10 of the North Dakota Century Code is amended and reenacted as follows:

**57-40.6-10. Standards and guidelines.**

1. The governing body of the local governmental unit with jurisdiction over an emergency ~~911 telephone services communication~~ system ~~shall be~~ or shall designate a governing committee ~~of the emergency 911 telephone system which~~that shall:
  - a. Designate ~~a 911~~an emergency services communication system coordinator.
  - b. Enter written agreements with participating organizations and agencies.
  - c. Designate lines of authority.
  - d. Provide for a written plan for rural addressing, if applicable, which has been coordinated with the local postal authorities. After January 1, 1993, a rural plan must conform to the modified burkle addressing plan. A plan in use before this date does not have to conform with the modified burkle addressing plan. If implemented, all rural addressing signs must comply with the manual on uniform traffic control devices standards.
  - e. ~~Provide for an update of the emergency 911 telephone system's data base annually by obtaining current records from the appropriate telecommunications company.~~
  - f. Define a records retention plan for all printed, electronic, and recorded records in accordance with state law and jurisdictional requirements.
  - ~~g-f.~~ Encourage that ~~coin-free dialing~~cost-free connection is available for ~~911 emergency~~ calls.
  - ~~h.~~ ~~Define a mechanism to differentiate between emergency 911 telephone calls from other calls.~~

<sup>172</sup> Section 57-40.6-10 was also amended by section 1 of House Bill No. 1139, chapter 479, and section 3 of House Bill No. 1156, chapter 478.

- ~~i. Provide for written operating procedures.~~
  - ~~j. Require the public safety answering point that initially receives an emergency call to be responsible for handling that call. If a transfer of an emergency call is made to a secondary public safety answering point, the initial public safety answering point may not disconnect from the three way call unless mutually agreed upon by the two public safety answering point dispatchers. Upon this agreement, the secondary public safety answering point becomes responsible for the call.~~
  - ~~k. Beginning June 1, 2002, ensure that the closest available emergency medical service is dispatched to the scene of medical emergencies regardless of city, county, or district boundaries. The state department of health shall provide emergency 911 telephone systems with necessary geographical information to assist in the implementation of this subdivision.~~
  - ~~i.g. Operate or contract for the operation of at least one public safety answering point to manage emergency services communications.~~
  - ~~h. Ensure that fee proceeds collected under this chapter are expended in accordance with guidelines developed pursuant to section 57-40.6-12 and implement an accounting system sufficient to meet the requirements of section 57-40.6-05.~~
2. The governing committee may:
  - a. Require appropriate liability protection.
  - b. Create a user advisory board.
  - c. Conduct an annual statistical evaluation of services.
  - d. Publish an annual financial report in the official county newspaper.
3. An emergency 911 telephone system must access and dispatch the following services communication system coordinator shall:
  - ~~a. Law enforcement.~~
  - ~~b. Fire service.~~
  - ~~c. Emergency medical service.~~
4. An emergency 911 telephone system may access and dispatch the following services:
  - ~~a. Poison control.~~
  - ~~b. Suicide prevention.~~
  - ~~c. Emergency management.~~
  - ~~d. Any other related service in subsection 3 or this subsection.~~

- ~~5. The governing committee of an emergency 911 telephone system shall provide that that system:~~
  - ~~a. Provides twenty four hour, seven day a week coverage.~~
  - ~~b. Dispatches and communicates with service identified in subsection 3.~~
  - ~~c. Records all incoming 911 calls and related radio and telephone communications.~~
  - ~~d. Provides alternate measures in the event of an emergency 911 telephone system failure, including an alternate public safety answering point seven-digit number.~~
  - ~~e. Ensures an adequate grade of service that is statistically based by population to assure access to an emergency 911 telephone system.~~
  - ~~f. Does not accept one-way call-in alarms or devices.~~
  - ~~g. Provides access to an emergency 911 telephone system through specialized telecommunications equipment as defined under section 54-44.8-01.~~
6. An emergency 911 telephone system may:
  - a. Locate the emergency caller utilizing electronic equipment.
  - b. Provide a mechanism for investigating false or prank calls.
7. An emergency 911 telephone system must include at least one public safety answering point.
8. A cellular 911 call must be routed to the appropriate 911 public safety answering point.
9. An emergency 911 telephone call must be answered by a dispatcher who has completed training through an association of public safety communications officials course or equivalent course. An emergency 911 dispatch center is required to offer emergency medical dispatch instructions on all emergency medical calls. Prearrival instructions must be offered by a dispatcher who has completed an emergency medical dispatch course approved by the division of emergency health services. Prearrival medical instructions may be given through a mutual aid agreement.
  - a. Ensure that address and mapping data is updated in the emergency services communication system database and mapping system within thirty days of receipt of notice or request for change;
  - b. Provide for a complete annual review of the emergency services communication system land line database by obtaining current records from the appropriate telecommunications companies;
  - c. Maintain the law enforcement, fire, and emergency medical service response boundaries for the public safety answering point service area; and

- d. Ensure that the dispatch protocols for emergency service notifications are documented and communicated with all law enforcement, fire, and emergency medical services.
4. A public safety answering point must:
    - a. Be operational twenty-four hours a day seven days a week or be capable of transferring emergency calls to another public safety answering point meeting the requirements of this section during times of nonoperation.
    - b. No later than July 1, 2013, be staffed continuously with at least one public safety telecommunicator who is on duty at all times of operation and who has primary responsibility for handling the communications of the public safety answering point.
    - c. Have the capability to dispatch law enforcement, fire, and medical responders to calls for service in the public safety answering point's service area.
    - d. Have two-way communication with all law enforcement, fire, and medical responder units and operational incident or unified commands in the public safety answering point's service area.
    - e. As authorized by the governing committee, access and dispatch poison control, suicide prevention, emergency management, and other public or private services but may not accept one-way private call-in alarms or devices as 911 calls.
    - f. Dispatch the emergency medical service that has been determined to be the quickest to arrive to the scene of medical emergencies regardless of city, county, or district boundaries. The state department of health shall provide public safety answering points with the physical locations of the emergency medical services necessary for the implementation of this subdivision.
    - g. Be capable of providing emergency medical dispatch prearrival instructions on all emergency medical calls. Prearrival instructions must be offered by a public safety telecommunicator who has completed an emergency medical dispatch course approved by the division of emergency health services. Prearrival medical instructions may be given through a mutual aid agreement.
    - h. Have security measures in place to prevent direct physical public access to on-duty public safety telecommunicators and to prevent direct physical public access to any room or location where public safety answering point equipment and systems are located.
    - i. Have an alternative source of electrical power that is sufficient to ensure at least six hours of continued operation of emergency communication equipment in the event of a commercial power failure. A public safety answering point also must have equipment to protect critical equipment and systems from irregular power conditions, such as power spikes, lightning, and brownouts. Documented testing of backup equipment must be performed each quarter under load.

- j. Maintain a written policy for computer system security and preservation of data.
- k. Have the capability of recording and immediate playback of recorded emergency calls and radio traffic.
- l. Employ a mechanism to differentiate emergency calls from other calls.
- m. Provide assistance for investigating false or prank calls.
- n. Have an alternative method of answering inbound emergency calls at the public safety answering point when its primary emergency services communication system equipment is inoperable.
- o. No later than July 1, 2013, have a written policy, appropriate agreements, and the capability to directly answer emergency calls and dispatch responders from a separate, independent location other than the main public safety answering point or another public safety answering point meeting the requirements of this section, within sixty minutes of an event that renders the main public safety answering point inoperative. This alternative location must have independent access to the public safety answering point's land line database. The capability of transferring emergency calls to this alternative location must be tested and documented annually.
- p. Remain responsible for all emergency calls received, even if a transfer of the call is made to a second public safety answering point. The initial public safety answering point may not disconnect from the three-way call unless mutually agreed by the two public safety telecommunicators. Upon this agreement, the secondary public safety answering point becomes responsible for the call.
- q. Employ the necessary telecommunications network and electronic equipment consistent with the minimum technical standards recommended by the national emergency number association to securely receive and respond to emergency communications.
- r. After July 1, 2013, maintain current, up-to-date mapping of its service area and have the ability to use longitude and latitude to direct responders.
- s. Secure two sets of fingerprints from a law enforcement agency or any other agency authorized to take fingerprints and all other information necessary to obtain state criminal history record information and a nationwide background check under federal law for all public safety telecommunicators.
- t. Have policies to ensure that all public safety telecommunicators:
  - (1) Do not have felony convictions;
  - (2) Complete preemployment screening for illegal substance use and hearing;
  - (3) Complete training through an association of public safety communications officials course or equivalent course;



- (4) Can prioritize appropriately all calls for service; and
- (5) Can determine the appropriate resources to be used in response to all calls for public safety services.
- u. Have written policies establishing procedures for recording and documenting relevant information of every request for service, including:
  - (1) Date and time of request for service;
  - (2) Name and address of requester, if available;
  - (3) Type of incident reported;
  - (4) Location of incident reported;
  - (5) Description of resources assigned, if any;
  - (6) Time of dispatch;
  - (7) Time of resource arrival; and
  - (8) Time of incident conclusion.
- v. Have written policies establishing dispatch procedures and provide periodic training of public safety telecommunicators on those procedures, including procedures for:
  - (1) Standardized call taking and dispatch procedures;
  - (2) The prompt handling and appropriate routing of misdirected emergency calls;
  - (3) The handling of hang-up emergency calls;
  - (4) The handling of calls from non-English speaking callers; and
  - (5) The handling of calls from callers with hearing or speech impairments.

Approved April 19, 2011  
Filed April 19, 2011

## CHAPTER 477

### SENATE BILL NO. 2246

(Senators Olafson, Lyson)  
(Representatives Frantsvog, Kreun)

AN ACT to amend and reenact section 57-40.6-02 of the North Dakota Century Code, relating to fees imposed for emergency services communications.

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

**SECTION 1. AMENDMENT.** Section 57-40.6-02 of the North Dakota Century Code is amended and reenacted as follows:

#### **57-40.6-02. (Effective through June 30, 2012) Authority of counties or cities to impose fee on assessed communications service - Procedure.**

The governing body of a county or city may impose a fee on all assessed communications services in accordance with the following requirements:

1. The governing body shall adopt a resolution that proposes the adoption of the fee permitted under this section. The resolution must specify an effective date for the fee which is no more than two years before the expected implementation date of the emergency services communication system to be funded by the fee. The resolution must include a provision for submitting the proposed fee to the electors of the county or city before the imposition of the fee is effective. The resolution must specify a fee that does not exceed one dollar per month per communication connection and must be applied equally upon all assessed communications services.
2. The question of the adoption of the fee must be submitted on a petition on which the petition title of the proposition includes the maximum monthly rate of the proposed fee authorized under subsection 1. The question of the adoption of the fee may be submitted to electors at a general, primary, or special election or at a school district election if the boundaries of the school district are coterminous with the boundaries of the governing body adopting the resolution proposing the adoption of the fee. The fee is not effective unless it is approved by a majority of the electors voting on the proposition. The ballot must be worded so that a "yes" vote authorizes imposition of the fee for an initial six-year period.
3. If the electors have approved imposition of a fee under this section before July 1, 2005, and the governing body of the city or county has not implemented that fee by June 30, 2005, the approval by the electors remains valid until the fee is implemented and, upon implementation, the fee may be imposed for a six-year period and is subject to reimposition under subsection 4.
4. Any political subdivision that desires to increase the fee, subject to the limitations in subsection 1, before the end of the six-year term, must use the same ballot procedure originally used to authorize the fee. The new ballot question may apply to only the proposed increase and not to the original

amount or the original term. If the increase is approved, the new amount may be collected for the balance of the original six-year term. If the fee authorized by this section is approved by the electors, the fee may be reimposed for six additional years without resubmitting the question to the electors.

5. In any geographic area, only one political subdivision may impose the fee and imposition must be based on the subscriber service address.
6. In the interest of public safety, where the subscriber's telephone exchange access service boundary and the boundary of the political subdivision imposing the fee do not coincide, and where all of the political subdivisions within the subscriber's telephone exchange access service boundary have not complied with subsection 1, and where a majority of the E911 subscribers within the subscriber's telephone exchange access service boundary have voted for the fee, a telephone exchange access service subscriber whose subscriber service address is outside the political subdivision may receive E911 services by signing a contract agreement with the political subdivision providing the emergency services communication system. The telephone exchange access service provider may collect an additional fee, equal in amount to the basic fee on those subscribers within the exchange boundary. The additional fee amounts collected must be remitted as provided in this chapter.
7. A fee imposed under this section before August 1, 2007, on telephone exchange access service is extended to all assessed communications services and remains in effect until changed under this section.
8. Political subdivisions within an intrastate multicounty public safety answering point may exceed the maximum fee of one dollar to an amount not to exceed one dollar and fifty cents. The governing body of the political subdivision may increase the fee by resolution subject to a vote in that political subdivision at the next general election.

**(Effective after June 30, 2012) Authority of counties or cities to impose fee on assessed communications service - Procedure.** The governing body of a county or city may impose a fee on all assessed communications services in accordance with the following requirements:

1. The governing body shall adopt a resolution that proposes the adoption of the fee permitted under this section. The resolution must specify an effective date for the fee which is no more than two years before the expected implementation date of the emergency services communication system to be funded by the fee. The resolution must include a provision for submitting the proposed fee to the electors of the county or city before the imposition of the fee is effective. The resolution must specify a fee that does not exceed one dollar and fifty cents per month per communication connection and must be applied equally upon all assessed communications services.
2. The question of the adoption of the fee must be submitted on a petition on which the petition title of the proposition includes the maximum monthly rate of the proposed fee authorized under subsection 1. The question of the adoption of the fee may be submitted to electors at a general, primary, or special election or at a school district election if the boundaries of the school district are coterminous with the boundaries of the governing body adopting the resolution proposing the adoption of the fee. The fee is not effective unless it is approved by a majority of the electors voting on the proposition. The ballot

must be worded so that a "yes" vote authorizes imposition of the fee for an initial six year period.

- ~~3.~~ If the electors have approved imposition of a fee under this section before July 1, 2005, and the governing body of the city or county has not implemented that fee by June 30, 2005, the approval by the electors remains valid until the fee is implemented and, upon implementation, the fee may be imposed for a six year period and is subject to reimposition under subsection 4.
- ~~4.~~ Any political subdivision that desires to increase the fee, subject to the limitations in subsection 1, before the end of the six year term, must use the same ballot procedure originally used to authorize the fee. The new ballot question may apply to only the proposed increase and not to the original amount or the original term. If the increase is approved, the new amount may be collected for the balance of the original six year term. If the fee authorized by this section is approved by the electors, the fee may be reimposed for six additional years without resubmitting the question to the electors. Once established by this section, the maximum fee may be increased, decreased, or eliminated by a majority vote of the electors. The question may be placed on the ballot of any general, primary, or special election by a resolution of the governing body, or by a petition signed by ten percent or more of the total number of qualified electors of the political subdivision voting for governor at the most recent gubernatorial election and submitted to the governing body. By action of the governing body, the fee amount collected may be adjusted, subject to the maximum approved by the voters, to meet the costs allowed by this chapter.
- ~~5.4.~~ In any geographic area, only one political subdivision may impose the fee and imposition must be based on the subscriber service address.
- ~~6.5.~~ In the interest of public safety, where the subscriber's telephone exchange access service boundary and the boundary of the political subdivision imposing the fee do not coincide, and where all of the political subdivisions within the subscriber's telephone exchange access service boundary have not complied with subsection 1, and where a majority of the E911 subscribers within the subscriber's telephone exchange access service boundary have voted for the fee, a telephone exchange access service subscriber whose subscriber service address is outside the political subdivision may receive E911 services by signing a contract agreement with the political subdivision providing the emergency services communication system. The telephone exchange access service provider may collect an additional fee, equal in amount to the basic fee on those subscribers within the exchange boundary. The additional fee amounts collected must be remitted as provided in this chapter.
- ~~7.6.~~ A fee imposed under this section before August 1, 2007, on telephone exchange access service is extended to all assessed communications services and will remain in effect until changed pursuant to subsection 3.

## CHAPTER 478

### HOUSE BILL NO. 1156

(Representatives Klemin, Porter)  
(Senators Lyson, Olafson)

AN ACT to amend and reenact sections 57-40.6-06 and 57-40.6-07 and subdivision a of subsection 1 of section 57-40.6-10 of the North Dakota Century Code, relating to the confidentiality of emergency services communication systems and to emergency services communication system coordinators; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 57-40.6-06 of the North Dakota Century Code is amended and reenacted as follows:

##### **57-40.6-06. Data base.**

Any telephone exchange access service provider providing emergency 911 service shall provide current customer names, addresses, and telephone numbers to each ~~944~~emergency services communication system coordinator, the coordinator's designee, or public safety answering point within each 911 system. Information provided under this section must be provided in accordance with the transactional record disclosure requirements of the federal Electronics Communications Privacy Act of 1986, 18 U.S.C. 2703(c)(1)(B)(iii), and in a manner that identifies the names and telephone numbers that are unpublished. The provider shall report data base information regarding new service or a change of service within two business days of the actual service change unless a longer period is permitted by the jurisdiction. The provider shall report data base information regarding dropped service at least monthly.

**SECTION 2. AMENDMENT.** Section 57-40.6-07 of the North Dakota Century Code is amended and reenacted as follows:

##### **57-40.6-07. Use of the furnished information.**

1. Unpublished names and telephone numbers generated by a ~~944~~an emergency services communication system coordinator or ~~944~~a public safety answering point or provided to a ~~944~~an emergency services communication system coordinator or public safety answering point under section 57-40.6-06 are confidential and may be used only for verifying the location or identity, or both, for response purposes, of a person calling a ~~944~~public safety answering point for emergency help or by the ~~944~~emergency services communication system coordinator or public safety answering point for the purpose of a public safety agency notifying a person of an emergency.
2. Published names and telephone numbers maintained by a ~~944~~an emergency services communication system coordinator or public safety answering point are exempt records as defined in section 44-04-17.1 but must be provided upon request to the treasurer and auditor of the county served by the ~~944~~

~~coordinator~~ public safety answering point for the purpose of verifying and correcting names and addresses used for official purposes.

3. A record obtained by a public safety answering point for the purpose of providing services in an emergency and which reveals personal information or the identity, address, or telephone number of a person requesting emergency service or reporting an emergency ~~by accessing an emergency telephone number 911 system~~ is exempt from section 44-04-18 and may be redacted from the record before it is released.
4. An audio recording of a request for emergency services or of a report of an emergency is an exempt record as defined in section 44-04-17.1. However, upon request, a person may listen to the audio recording, but may not copy or record the audio. A person also may request a written transcript of the audio recording, which must be provided to the person within a reasonable time.

<sup>173</sup> **SECTION 3. AMENDMENT.** Subdivision a of subsection 1 of section 57-40.6-10 of the North Dakota Century Code is amended and reenacted as follows:

- a. Designate ~~a 911~~ an emergency services communication system coordinator.

Approved April 4, 2011  
Filed April 4, 2011

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<sup>173</sup> Section 57-40.6-10 was also amended by section 2 of House Bill No. 1045, chapter 476, and section 1 of House Bill No. 1139, chapter 479.

## CHAPTER 479

### HOUSE BILL NO. 1139

(Representative Porter)

AN ACT to amend and reenact subdivision k of subsection 1 of section 57-40.6-10 of the North Dakota Century Code, relating to dispatch of emergency medical services.

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

<sup>174</sup> **SECTION 1. AMENDMENT.** Subdivision k of subsection 1 of section 57-40.6-10 of the North Dakota Century Code is amended and reenacted as follows:

- k. Beginning June 1, 2002, ensure that the closest available emergency medical service is dispatched to the scene of medical emergencies regardless of city, county, or district boundaries. The state department of health shall provide emergency 911 telephone systems with necessary geographical information to assist in the implementation of this subdivision. An entity that is a quick response unit whose primary function is not emergency medical services may elect not to be dispatched to medical emergencies outside the entity's primary response area if the area outside the entity's primary response area is served by an advanced life support ambulance service. An entity that makes this election not to be dispatched is not eligible for an emergency medical services allocation under chapter 23-40.

Approved April 8, 2011  
Filed April 11, 2011

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<sup>174</sup> Section 57-40.6-10 was also amended by section 2 of House Bill No. 1045, chapter 476, and section 3 of House Bill No. 1156, chapter 478.

## CHAPTER 480

### HOUSE BILL NO. 1205

(Representatives Delmore, R. Kelsch, S. Meyer)  
(Senators Krebsbach, Lyson, Nelson)

AN ACT to create and enact a new section to chapter 57-40.6 of the North Dakota Century Code, relating to call location information by a wireless service provider to law enforcement.

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

**SECTION 1.** A new section to chapter 57-40.6 of the North Dakota Century Code is created and enacted as follows:

#### Provision of call location information by wireless service provider to law enforcement.

1. Upon request of a law enforcement agency or a public safety answering point on behalf of a law enforcement agency, a wireless service provider shall provide call location information concerning the telecommunications device of a user to the requesting law enforcement agency or public safety answering point. A law enforcement agency or public safety answering point may not request information under this section unless for the purposes of responding to a call for emergency services or in an emergency situation that involves the risk of death or serious physical harm.
2. A wireless service provider may establish protocols by which the carrier voluntarily discloses call location information.
3. A claim for relief may not be brought in any court against any wireless service provider or any other person for providing call location information if acting in good faith and under this section.
4. The bureau of criminal investigation shall obtain contact information from all wireless service providers authorized to do business in this state to facilitate a request from a law enforcement agency or a public safety answering point on behalf of a law enforcement agency for call location information under this section. The bureau shall disseminate the contact information to each public safety answering point in this state.

Approved April 8, 2011  
Filed April 11, 2011



## CHAPTER 481

### SENATE BILL NO. 2197

(Senators Wardner, Robinson, Krebsbach)  
(Representatives Kempenich, Monson, Williams)

AN ACT to create and enact a new subsection to section 57-43.2-05 of the North Dakota Century Code, relating to licensing requirements for the special fuels tax; and to provide an effective date.

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

**SECTION 1.** A new subsection to section 57-43.2-05 of the North Dakota Century Code is created and enacted as follows:

Based on the information provided in a special fuels retailer's license application and on the special fuels tax laws in effect at the time the application is filed, the tax commissioner may determine, on those conditions and terms as the commissioner deems reasonable and necessary, that a special fuels retailer license is not required.

- a. If there is a subsequent change in the special fuels tax laws that would require the person to obtain a license, the tax commissioner shall notify the person of the change and that a license application must be submitted. The person shall submit an application within thirty days of the notice provided in this subdivision. If the application is not filed, the tax commissioner may take the action necessary to enforce the license requirements of this section.
- b. If there is a subsequent change in the applicant's business practices that may require the person to obtain a retail license, the person must submit a revised license application. The tax commissioner shall review the revised application and make a redetermination as to whether a special fuels license is required.
- c. If the tax commissioner determines there was an omission or erroneous information provided in a license application and that a license would have been required under this section if correct and complete information had been provided, the tax commissioner shall assess tax, penalty, and interest from the date the license application was received. The tax must be assessed as provided in section 57-43.2-15 and must be based on the best information available. Subsection 4 of section 57-43.2-14 applies to the time period in which an assessment may be made under this subsection.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for special fuels retailer's license applications filed after June 30, 2011.

Approved April 27, 2011  
Filed April 27, 2011

## CHAPTER 482

### HOUSE BILL NO. 1467

(Representatives Kempenich, Thoreson, S. Meyer, Onstad)  
(Senators Schaible, Wardner)

AN ACT to amend and reenact section 57-51.1-03 of the North Dakota Century Code, relating to a triggered oil extraction tax rate reduction; 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 57-51.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**57-51.1-03. (Effective through June 30, ~~2012~~2013) Exemptions from oil extraction tax.**

The following activities are specifically exempted from the oil extraction tax:

1. The activity of extracting from the earth any oil that is exempt from the gross production tax imposed by chapter 57-51.
2. The activity of extracting from the earth any oil from a stripper well property.
3. For a well drilled and completed as a vertical well, the initial production of oil from the well is exempt from any taxes imposed under this chapter for a period of fifteen months, except that oil produced from any well drilled and completed as a horizontal well is exempt from any taxes imposed under this chapter for a period of twenty-four months. Oil recovered during testing prior to well completion is exempt from the oil extraction tax. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.
4. The production of oil from a qualifying well that was worked over is exempt from any taxes imposed under this chapter for a period of twelve months, beginning with the first day of the third calendar month after the completion of the work-over project. The exemption provided by this subsection is only effective if the well operator establishes to the satisfaction of the industrial commission upon completion of the project that the cost of the project exceeded sixty-five thousand dollars or production is increased at least fifty percent during the first two months after completion of the project. A qualifying well under this subsection is a well with an average daily production of no more than fifty barrels of oil during the latest six calendar months of continuous production. A work-over project under this subsection means the continuous employment of a work-over rig, including recompletions and reentries. The exemption provided by this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is

reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.

5. a. The incremental production from a secondary recovery project which has been certified as a qualified project by the industrial commission after July 1, 1991, is exempt from any taxes imposed under this chapter for a period of five years from the date the incremental production begins.
- b. The incremental production from a tertiary recovery project that does not use carbon dioxide and 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 that uses carbon dioxide and which has been certified as a qualified project by the industrial commission is exempt from any taxes imposed under this chapter from the date the incremental production begins.
- c. For purposes of this subsection, incremental production is defined in the following manner:
  - (1) For purposes of determining the exemption provided for in subdivision a and with respect to a unit where there has not been a secondary recovery project, incremental production means the difference between the total amount of oil produced from the unit during the secondary recovery project and the amount of primary production from the unit. For purposes of this paragraph, primary production means the amount of oil which would have been produced from the unit if the secondary recovery project had not been commenced. The industrial commission shall determine the amount of primary production in a manner which conforms to the practice and procedure used by the commission at the time the project is certified.
  - (2) For purposes of determining the exemption provided for in subdivision a and with respect to a unit where a secondary recovery project was in existence prior to July 1, 1991, and where the industrial commission cannot establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during a new secondary recovery project and the amount of production which would be equivalent to the average monthly production from the unit during the most recent twelve months of normal production reduced by a production decline rate of ten percent for each year. The industrial commission shall determine the average monthly production from the unit during the most recent twelve months of normal production and must upon request or upon its own motion hold a hearing to make this determination. For purposes of this paragraph, when determining the most recent twelve months of normal production the industrial commission is not required to use twelve consecutive months. In addition, the production decline rate of ten percent must be applied from the last month in the twelve-month period of time.
  - (3) For purposes of determining the exemption provided for in subdivision a and with respect to a unit where a secondary recovery project was in existence before July 1, 1991, and where the industrial

commission can establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during the new secondary recovery project and the total amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced. For purposes of this paragraph, the total amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced includes both primary production and production that occurred as a result of the secondary recovery project that was in existence before July 1, 1991. The industrial commission shall determine the amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced in a manner that conforms to the practice and procedure used by the commission at the time the new secondary recovery project is certified.

- (4) For purposes of determining the exemption provided for in subdivision b and with respect to a unit where there has not been a secondary recovery project, incremental production means the difference between the total amount of oil produced from the unit during the tertiary recovery project and the amount of primary production from the unit. For purposes of this paragraph, primary production means the amount of oil which would have been produced from the unit if the tertiary recovery project had not been commenced. The industrial commission shall determine the amount of primary production in a manner which conforms to the practice and procedure used by the commission at the time the project is certified.
- (5) For purposes of determining the exemption provided for in subdivision b and with respect to a unit where there is or has been a secondary recovery project, incremental production means the difference between the total amount of oil produced during the tertiary recovery project and the amount of production which would be equivalent to the average monthly production from the unit during the most recent twelve months of normal production reduced by a production decline rate of ten percent for each year. The industrial commission shall determine the average monthly production from the unit during the most recent twelve months of normal production and must upon request or upon its own motion hold a hearing to make this determination. For purposes of this paragraph, when determining the most recent twelve months of normal production the industrial commission is not required to use twelve consecutive months. In addition, the production decline rate of ten percent must be applied from the last month in the twelve-month period of time.
- (6) For purposes of determining the exemption provided for in subdivision b and with respect to a unit where there is or has been a secondary recovery project and where the industrial commission can establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during the tertiary recovery project and the total amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced. For purposes of this paragraph, the total amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced includes both

primary production and production that occurred as a result of any secondary recovery project. The industrial commission shall determine the amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced in a manner that conforms to the practice and procedure used by the commission at the time the tertiary recovery project is certified.

- d. The industrial commission shall adopt rules relating to this exemption that must include procedures for determining incremental production as defined in subdivision c.
6. The production of oil from a two-year inactive well, as determined by the industrial commission and certified to the state tax commissioner, for a period of ten years after the date of receipt of the certification. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.
7. The production of oil from a horizontal reentry well, as determined by the industrial commission and certified to the state tax commissioner, for a period of nine months after the date the well is completed as a horizontal well. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.
8. The initial production of oil from a well is exempt from any taxes imposed under this chapter for a period of sixty months if:
  - a. The well is located within the boundaries of an Indian reservation;
  - b. The well is drilled and completed on lands held in trust by the United States for an Indian tribe or individual Indian; or
  - c. The well is drilled and completed on lands held by an Indian tribe if the interest is in existence on August 1, 1997.
9. The first seventy-five thousand barrels or the first four million five hundred thousand dollars of gross value at the well, whichever is less, of oil produced during the first eighteen months after completion, from a horizontal well drilled and completed after April 30, 2009, is subject to a reduced tax rate of two percent of the gross value at the well of the oil extracted under this chapter. A well eligible for a reduced tax rate under this subsection is eligible for the exemption for horizontal wells under subsection 3, if the exemption under subsection 3 is effective during all or part of the first twenty-four months after completion. The rate reduction under this subsection becomes effective on the first day of the month following a month for which the average price of a barrel of crude oil is less than fifty-five dollars. The rate reduction under this subsection becomes ineffective on the first day of the month following a month in which the average price of a barrel of crude oil exceeds seventy dollars. If the rate reduction under this subsection is effective on the date of completion of a well, the rate reduction applies to production from that well for up to

eighteen months after completion, subject to the other limitations of this subsection. If the rate reduction under this subsection is ineffective on the date of completion of a well, the rate reduction under this subsection does not apply to production from that well at any time.

**(Effective after June 30, 2012)** Exemptions from oil extraction tax. The following activities are specifically exempted from the oil extraction tax:

1. The activity of extracting from the earth any oil that is exempt from the gross production tax imposed by chapter 57-51.
2. The activity of extracting from the earth any oil from a stripper well property.
3. For a well drilled and completed as a vertical well, the initial production of oil from the well is exempt from any taxes imposed under this chapter for a period of fifteen months, except that oil produced from any well drilled and completed as a horizontal well is exempt from any taxes imposed under this chapter for a period of twenty-four months. Oil recovered during testing prior to well completion is exempt from the oil extraction tax. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.
4. The production of oil from a qualifying well that was worked over is exempt from any taxes imposed under this chapter for a period of twelve months, beginning with the first day of the third calendar month after the completion of the work-over project. The exemption provided by this subsection is only effective if the well operator establishes to the satisfaction of the industrial commission upon completion of the project that the cost of the project exceeded sixty-five thousand dollars or production is increased at least fifty percent during the first two months after completion of the project. A qualifying well under this subsection is a well with an average daily production of no more than fifty barrels of oil during the latest six calendar months of continuous production. A work-over project under this subsection means the continuous employment of a work-over rig, including recompletions and reentries. The exemption provided by this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.
5.
  - a. The incremental production from a secondary recovery project which has been certified as a qualified project by the industrial commission after July 1, 1991, is exempt from any taxes imposed under this chapter for a period of five years from the date the incremental production begins.
  - b. The incremental production from a tertiary recovery project that does not use carbon dioxide and 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 that uses carbon dioxide and which has been certified as a qualified project by the

industrial commission is exempt from any taxes imposed under this chapter from the date the incremental production begins.

- c. For purposes of this subsection, incremental production is defined in the following manner:
- (1) For purposes of determining the exemption provided for in subdivision a and with respect to a unit where there has not been a secondary recovery project, incremental production means the difference between the total amount of oil produced from the unit during the secondary recovery project and the amount of primary production from the unit. For purposes of this paragraph, primary production means the amount of oil which would have been produced from the unit if the secondary recovery project had not been commenced. The industrial commission shall determine the amount of primary production in a manner which conforms to the practice and procedure used by the commission at the time the project is certified.
  - (2) For purposes of determining the exemption provided for in subdivision a and with respect to a unit where a secondary recovery project was in existence prior to July 1, 1991, and where the industrial commission cannot establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during a new secondary recovery project and the amount of production which would be equivalent to the average monthly production from the unit during the most recent twelve months of normal production reduced by a production decline rate of ten percent for each year. The industrial commission shall determine the average monthly production from the unit during the most recent twelve months of normal production and must upon request or upon its own motion hold a hearing to make this determination. For purposes of this paragraph, when determining the most recent twelve months of normal production the industrial commission is not required to use twelve consecutive months. In addition, the production decline rate of ten percent must be applied from the last month in the twelve-month period of time.
  - (3) For purposes of determining the exemption provided for in subdivision a and with respect to a unit where a secondary recovery project was in existence before July 1, 1991, and where the industrial commission can establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during the new secondary recovery project and the total amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced. For purposes of this paragraph, the total amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced includes both primary production and production that occurred as a result of the secondary recovery project that was in existence before July 1, 1991. The industrial commission shall determine the amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced in a manner that conforms to the practice and procedure used by the commission at the time the new secondary recovery project is certified.

- (4) For purposes of determining the exemption provided for in subdivision b and with respect to a unit where there has not been a secondary recovery project, incremental production means the difference between the total amount of oil produced from the unit during the tertiary recovery project and the amount of primary production from the unit. For purposes of this paragraph, primary production means the amount of oil which would have been produced from the unit if the tertiary recovery project had not been commenced. The industrial commission shall determine the amount of primary production in a manner which conforms to the practice and procedure used by the commission at the time the project is certified.
  - (5) For purposes of determining the exemption provided for in subdivision b and with respect to a unit where there is or has been a secondary recovery project, incremental production means the difference between the total amount of oil produced during the tertiary recovery project and the amount of production which would be equivalent to the average monthly production from the unit during the most recent twelve months of normal production reduced by a production decline rate of ten percent for each year. The industrial commission shall determine the average monthly production from the unit during the most recent twelve months of normal production and must upon request or upon its own motion hold a hearing to make this determination. For purposes of this paragraph, when determining the most recent twelve months of normal production the industrial commission is not required to use twelve consecutive months. In addition, the production decline rate of ten percent must be applied from the last month in the twelve-month period of time.
  - (6) For purposes of determining the exemption provided for in subdivision b and with respect to a unit where there is or has been a secondary recovery project and where the industrial commission can establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during the tertiary recovery project and the total amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced. For purposes of this paragraph, the total amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced includes both primary production and production that occurred as a result of any secondary recovery project. The industrial commission shall determine the amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced in a manner that conforms to the practice and procedure used by the commission at the time the tertiary recovery project is certified.
- d. The industrial commission shall adopt rules relating to this exemption that must include procedures for determining incremental production as defined in subdivision c.
6. The production of oil from a two-year inactive well, as determined by the industrial commission and certified to the state tax commissioner, for a period of ten years after the date of receipt of the certification. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period.



However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.

7. The production of oil from a horizontal reentry well, as determined by the industrial commission and certified to the state tax commissioner, for a period of nine months after the date the well is completed as a horizontal well. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.
8. The initial production of oil from a well is exempt from any taxes imposed under this chapter for a period of sixty months if:
  - a. The well is located within the boundaries of an Indian reservation;
  - b. The well is drilled and completed on lands held in trust by the United States for an Indian tribe or individual Indian; or
  - c. The well is drilled and completed on lands held by an Indian tribe if the interest is in existence on August 1, 1997.
9. The first seventy-five thousand barrels of oil produced during the first eighteen months after completion, from a horizontal well drilled and completed in the Bakken formation after June 30, 2007, and before July 1, 2008, is subject to a reduced tax rate of two percent of the gross value at the well of the oil extracted under this chapter. A well eligible for a reduced tax rate under this subsection is eligible for the exemption for horizontal wells under subsection 3, if the exemption under subsection 3 is effective during all or part of the first twenty-four months after completion.

**SECTION 2. EFFECTIVE DATE - EXPIRATION DATE.** This Act is effective for taxable events occurring after June 30, 2011, and is effective through June 30, 2013, and is thereafter ineffective.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 483

### HOUSE BILL NO. 1451

(Representatives Monson, Carlson, Delzer, Skarphol)  
(Senators Oehlke, Sitte)

AN ACT to create and enact a new section to chapter 57-51.1 of the North Dakota Century Code, relating to deposit of oil and gas tax revenue; to amend and reenact sections 6-09.6-01.1, 6-09.6-01.2, 6-09.6-03, 6-09.7-05, 15-08.1-08, 15-08.1-09, 54-27.2-01, 57-51.1-07.3, and 61-33-07 of the North Dakota Century Code, relating to the lands and minerals trust fund, the budget stabilization fund, and the oil and gas research fund; to repeal sections 57-51.1-07.2 and 57-51.1-07.4 of the North Dakota Century Code, relating to elimination of the permanent oil tax trust fund; to provide for transfers; to provide an effective date; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 6-09.6-01.1 of the North Dakota Century Code is amended and reenacted as follows:

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

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

**SECTION 2. AMENDMENT.** Section 6-09.6-01.2 of the North Dakota Century Code is amended and reenacted as follows:

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

There is hereby created a developmentally disabled facility loan fund program no. 3 for the purpose of making loans to nonprofit corporations, organized in the localities in which facilities are proposed to be located, for project costs, including the cost of real estate, construction, reconstruction, acquisition, furnishings and equipment, and administrative costs related to the establishment thereof, of facilities

for developmentally disabled, chronically mentally ill, and physically disabled persons. The loan fund may borrow an amount not to exceed four million nine hundred fifty-one thousand one hundred forty-five dollars from the common schools trust fund to finance the program. The loan fund program shall be administered by the Bank of North Dakota in the same manner the Bank administers the program established by sections 6-09.6-01 and 6-09.6-02 through 6-09.6-05, except that all payments of principal and interest must be credited by the Bank to the ~~lands and minerals trust~~strategic investment and improvements fund after the Bank has deducted a service fee for administering the program equivalent to an annual fee of one-half of one percent of the principal balance of the outstanding loans.

**SECTION 3. AMENDMENT.** Section 6-09.6-03 of the North Dakota Century Code is amended and reenacted as follows:

**6-09.6-03. Amount of loan - Terms and conditions.**

Loans in an amount not exceeding three-fourths of project costs, including the cost of construction, reconstruction, acquisition, furnishings, equipment, and administrative costs related to the establishment of the project, and the cost or value of real estate upon which the facility is located, must be made by the Bank of North Dakota from the fund maintained pursuant to sections 6-09.6-01, 6-09.6-01.1, and 6-09.6-01.2. Such loans must bear interest at a rate of ten and one-half percent for loans relating to facilities for developmentally disabled persons and five percent for loans relating to facilities for physically disabled persons and chronically mentally ill persons and are repayable in the manner prescribed by the Bank of North Dakota within a period of not more than twenty-five years. In addition, in consideration of the granting of a loan under this chapter, each nonprofit corporation shall execute a contract with the state to operate the facility in accordance with the standards prescribed for the licensing of the facility by the department of human services. The contract shall also provide that if the use of the facility is discontinued or diverted to purposes other than those proposed in the loan application without the express consent of the department of human services, the full amount of the loan provided under this chapter immediately becomes due and payable. The Bank of North Dakota may annually deduct, as a service fee for administering the revolving fund maintained under section 6-09.6-01, one-half of one percent of the principal balance of the outstanding loans from the revolving fund. Payments of interest and principal on loans made under section 6-09.6-01 must be made to the Bank of North Dakota and credited to the revolving fund. Payments of principal and interest on loans made under sections 6-09.6-01.1 and 6-09.6-01.2 must be credited by the Bank to the ~~lands and minerals trust~~strategic investment and improvements fund after the Bank has deducted a service fee for administering the program equivalent to an annual fee of one-half of one percent of the principal balance of the outstanding loans.

<sup>175</sup> **SECTION 4. 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 ~~lands and minerals trust~~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 guarantee reserve fund must be maintained from the ~~lands and minerals trust~~strategic investment and improvements fund created by section 15-08.1-08 and any moneys transferred from

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<sup>175</sup> Section 6-09.7-05 was also amended by section 3 of Senate Bill No. 2306, chapter 82.

the ~~lands and minerals trust~~ strategic investment and improvements fund to maintain 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 shall be deposited in the reserve fund. The amount of reserves for all guaranteed loans must be determined by a formula which will assure, as determined by the Bank, an adequate amount of reserve.

**SECTION 5. AMENDMENT.** Section 15-08.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**15-08.1-08. Income - Expenses - Reimbursement - Creation of ~~lands and minerals trust~~strategic investment and improvements fund - Legislative intent - Contingent transfer to legacy fund.**

The income derived from the sale, lease, and management of the mineral interests acquired by the board of university and school lands pursuant to this chapter ~~and other funds as provided by law must, after deducting the expenses of sale, lease, and management of the property, be deposited in a fund to be known as the ~~lands and minerals trust~~strategic investment and improvements fund.~~ The corpus and interest of such trust may be expended as the legislative assembly may provide for one-time expenditures relating to improving state infrastructure or for initiatives to improve the efficiency and effectiveness of state government. It is the intent of the legislative assembly that moneys in the fund may be included in draft appropriation acts under section 54-44.1-06 and may be appropriated by the legislative assembly, but only to the extent that the moneys are estimated to be available at the beginning of the biennium in which the appropriations are authorized. If the unobligated balance in the fund at the end of any month exceeds three hundred million dollars, twenty-five percent of any revenues received for deposit in the fund in the subsequent month must be deposited instead into the legacy fund. For purposes of this section, "unobligated balance in the fund" means the balance in the fund reduced by appropriations or transfers from the fund authorized by the legislative assembly, guarantee reserve fund requirements under section 6-09.7-05, and any fund balance designated by the board of university and school lands relating to potential title disputes related to certain riverbed leases.

**SECTION 6. AMENDMENT.** Section 15-08.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**15-08.1-09. ~~Lands and minerals trust~~Strategic investment and improvements fund - Continuing appropriation.**

There is appropriated annually the amount necessary to pay from the ~~lands and minerals trust~~ strategic investment and improvements fund all principal and interest to the common schools trust fund on any loans made from the fund to the developmentally disabled loan fund program nos. 2 and 3. This authority is ineffective after all loans are repaid.

**SECTION 7. AMENDMENT.** Section 54-27.2-01 of the North Dakota Century Code is amended and reenacted as follows:

### **54-27.2-01. (Effective through June 30, 2009) Budget stabilization fund.**

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

**(Effective after June 30, 2009) Budget stabilization fund.** The budget stabilization fund is a special fund in the state treasury. The state investment board shall supervise investment of the budget stabilization fund in accordance with chapter 21-10. Any interest or other budget stabilization fund earnings must be deposited in the fund. Any amounts provided by law for deposit in the fund and any interest or earnings of the fund which would bring the balance in the fund to an amount greater than ~~ten~~ nine and one-half percent of the current biennial state general fund budget, as finally approved by the most recently adjourned special or regular session of the legislative assembly, may not be deposited or retained in the fund but must be deposited instead in the state general fund.

**SECTION 8. 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, property tax relief sustainability, strategic investment and improvements fund, or the ~~permanent oil tax trust~~ state disaster relief fund, two percent of the revenues must be deposited monthly into the oil and gas research fund, up to four 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.

**SECTION 9.** A new section to chapter 57-51.1 of the North Dakota Century Code is created and enacted as follows:

#### **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 as follows:

1. The first two hundred million dollars into the state general fund;
2. The next three hundred forty-one million seven hundred ninety thousand dollars into the property tax relief sustainability fund;
3. The next one hundred million dollars into the state general fund;

4. The next one hundred million dollars into the strategic investment and improvements fund;
5. The next twenty-two million dollars into the state disaster relief fund; and
6. Any additional revenues into the strategic investment and improvements fund.

**SECTION 10. AMENDMENT.** Section 61-33-07 of the North Dakota Century Code is amended and reenacted as follows:

**61-33-07. Deposit of income.**

All income derived from the lease and management of the lands acquired by the state engineer and board of university and school lands pursuant to this chapter and not belonging to other trust funds must be deposited in the ~~lands and minerals trust~~ strategic investment and improvements fund.

**SECTION 11. REPEAL.** Sections 57-51.1-07.2 and 57-51.1-07.4 of the North Dakota Century Code are repealed at the end of the biennium beginning July 1, 2009, and ending June 30, 2011. For purposes of this section, at the end of the biennium means after cancellation of unexpended appropriations under section 54-44.1-11 but before any transfers to the budget stabilization fund under section 54-27.2-02.

**SECTION 12. TRANSFER.** At the end of the biennium beginning July 1, 2009, and ending June 30, 2011, the state treasurer shall transfer any remaining balance in the permanent oil tax trust fund to the state general fund. For purposes of this section, at the end of the biennium means after cancellation of unexpended appropriations under section 54-44.1-11 but before any transfers to the budget stabilization fund under section 54-27.2-02.

**SECTION 13. TRANSFER.** As soon as feasible after June 30, 2011, the state treasurer shall close out the lands and minerals trust fund and transfer any remaining unobligated balance to the strategic investment and improvements fund.

**SECTION 14. EFFECTIVE DATE.** This Act becomes effective July 1, 2011.

**SECTION 15. EMERGENCY.** This Act is declared to be an emergency measure.

Approved May 9, 2011  
Filed May 10, 2011

## CHAPTER 484

### SENATE BILL NO. 2129

(Senators Bowman, Lyson, Wardner, Warner)  
(Representatives S. Meyer, Sukut)

AN ACT to amend and reenact sections 57-51-15 and 57-51.1-07 of the North Dakota Century Code, relating to legacy fund deposits of oil and gas tax collections and holding political subdivisions harmless against related allocation reductions; and to provide an effective date.

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

<sup>176</sup> **SECTION 1. AMENDMENT.** Section 57-51-15 of the North Dakota Century Code is amended and reenacted as follows:

**57-51-15. Apportionment and use of proceeds of Gross production tax allocation.**

The gross production tax ~~provided for in this chapter~~ must be ~~apportioned~~allocated monthly as follows:

1. First the tax revenue collected under this chapter equal to one percent of the gross value at the well of the oil and one-fifth of the tax on gas must be deposited with the state treasurer who shall:
  - a. ~~Credit thirty-three and one-third percent of the revenues to the oil and gas impact grant fund, but not in an amount exceeding eight million dollars per biennium;~~
  - b. Allocate five hundred thousand dollars per fiscal year to each city in an oil-producing county which has a population of seven thousand five hundred or more and more than two percent of its private covered employment engaged in the mining industry, according to data compiled by job service North Dakota. The allocation under this subdivision must be doubled if the city has more than seven and one-half percent of its private covered employment engaged in the mining industry, according to data compiled by job service North Dakota; ~~and~~
  - b. Allocate thirty-three and one-third percent of the revenues to the oil and gas impact grant fund, but not in an amount exceeding eight million dollars per biennium; and
  - c. ~~Credit~~Allocate the remaining revenues ~~to the state general fund under subsection 3.~~
2. 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 as follows:

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<sup>176</sup> Section 57-51-15 was also amended by section 6 of House Bill No. 1013, chapter 13, and section 1 of House Bill No. 1077, chapter 485.

- a. The first two million dollars ~~must be~~is allocated to the county.
  - b. ~~The~~Of the next one million dollars ~~must be allocated,~~ seventy-five percent is allocated to the county and ~~twenty five percent to the state general fund.~~
  - c. ~~The~~Of the next one million dollars ~~must be allocated,~~ fifty percent is allocated to the county and ~~fifty percent to the state general fund.~~
  - d. ~~The~~Of the next fourteen million dollars ~~must be allocated,~~ twenty-five percent is allocated to the county and ~~seventy five percent to the state general fund.~~
  - e. ~~All~~Of all annual revenue ~~remaining after the allocation in subdivision d~~ must be allocated~~exceeding eighteen million dollars,~~ ten percent is allocated to the county and ~~ninety percent to the state general fund.~~
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.
- ~~3.4.~~ The amount to which each county is entitled under subsection 2 must be allocated within the county so the first five million three hundred fifty thousand dollars is allocated under subsection ~~45~~ for each fiscal year and any amount received by a county exceeding five million three hundred fifty thousand dollars is credited by the county treasurer to the county infrastructure fund and allocated under subsection ~~56~~.
- ~~4.5.~~ a. Forty-five percent of all revenues allocated to any county for allocation under this subsection must be credited by the county treasurer to the county general fund. However, the allocation to a county under this subdivision must be credited to the state general fund if during that fiscal year the county does not levy 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 of all revenues allocated to any county for allocation under this subsection must be apportioned by the county treasurer no less than quarterly to school districts within the county on the average daily attendance distribution basis, as certified to the county treasurer by the county superintendent of schools. However, no school district may receive in any single academic year an amount under this subsection greater than the county average per student cost multiplied by seventy percent, then multiplied by the number of students in average daily attendance or the number of children of school age in the school census for the county, whichever is greater. Provided, however, that in any county in which the average daily attendance or the school census, whichever is greater, is fewer than four hundred, the county is entitled to one hundred twenty percent of the county average per student cost multiplied by the number of students in average daily attendance or the number of children of school



age in the school census for the county, whichever is greater. Once this level has been reached through distributions under this subsection, all excess funds to which the school district would be entitled as part of its thirty-five percent share must be deposited instead in the county general fund. The county superintendent of schools of each oil-producing county shall certify to the county treasurer by July first of each year the amount to which each school district is limited pursuant to this subsection. As used in this subsection, "average daily attendance" means the average daily attendance for the school year immediately preceding the certification by the county superintendent of schools required by this subsection.

The countywide allocation to school districts under this subdivision is subject to the following:

- (1) The first three hundred fifty thousand dollars is apportioned entirely among school districts in the county.
  - (2) The next three hundred fifty thousand dollars is apportioned seventy-five percent among school districts in the county and twenty-five percent to the county infrastructure fund.
  - (3) The next two hundred sixty-two thousand five hundred dollars is apportioned two-thirds among school districts in the county and one-third to the county infrastructure fund.
  - (4) The next one hundred seventy-five thousand dollars is apportioned fifty percent among school districts in the county and fifty percent to the county infrastructure fund.
  - (5) Any remaining amount is apportioned to the county infrastructure fund except from that remaining amount the following amounts are apportioned among school districts in the county:
    - (a) Four hundred ninety thousand dollars, for counties having a population of three thousand or fewer.
    - (b) Five hundred sixty thousand dollars, for counties having a population of more than three thousand and fewer than six thousand.
    - (c) Seven hundred thirty-five thousand dollars, for counties having a population of six thousand or more.
- c. Twenty percent of all revenues allocated to any county for allocation under this subsection must be apportioned no less than quarterly by the state treasurer to the incorporated cities of the county. Apportionment among cities under this subsection must be based upon the population of each incorporated city according to the last official decennial federal census. A city may not receive an allocation for a fiscal year under this subsection and subsection ~~56~~ which totals more than seven hundred fifty dollars per capita. Once this level has been reached through distributions under this subsection, all excess funds to which any city would be entitled except for this limitation must be deposited instead in that county's general fund. 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. If a city receives a direct allocation under subsection 1, the allocation to that city under this subsection is limited to sixty percent of the amount otherwise determined for that city under this subsection and the amount exceeding this limitation must be reallocated among the other cities in the county.

- ~~5-6.~~ a. Forty-five percent of all revenues allocated to a county infrastructure fund under subsections ~~34~~ and ~~45~~ must be credited by the county treasurer to the county general fund. However, the allocation to a county under this subdivision must be credited to the state general fund if during that fiscal year the county does not levy 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 of all revenues allocated to the county infrastructure fund under subsections ~~34~~ and ~~45~~ must be allocated by the board of county commissioners to or for the benefit of townships in the county on the basis of applications by townships for funding to offset oil and gas development impact to township roads or other infrastructure needs or applications by school districts for repair or replacement of school district vehicles necessitated by damage or deterioration attributable to travel on oil and gas development-impacted roads. An organized township is not eligible for an allocation of funds under this subdivision unless during that fiscal year that township levies at least ten mills for township purposes. For unorganized townships within the county, the board of county commissioners may expend an appropriate portion of revenues under this subdivision to offset oil and gas development impact to township roads or other infrastructure needs in those townships. The amount deposited during each calendar year in the county infrastructure fund which is designated for allocation under this subdivision and which is unexpended and unobligated at the end of the calendar year must be transferred by the county treasurer to the county road and bridge fund for use on county road and bridge projects.
- c. Twenty percent of all revenues allocated to any county infrastructure fund under subsections ~~34~~ and ~~45~~ must be allocated by the county treasurer no less than quarterly to the incorporated cities of the county. Apportionment among cities under this subsection must be based upon the population of each incorporated city according to the last official decennial federal census. A city may not receive an allocation for a fiscal year under this subsection and subsection ~~45~~ which totals more than seven hundred fifty dollars per capita. Once this per capita limitation has been reached, all excess funds to which a city would otherwise be entitled must be deposited instead in that county's general fund. If a city receives a direct allocation under subsection 1, the allocation to that city under this subsection is limited to sixty percent of the amount otherwise determined for that city under this subsection and the amount exceeding this limitation must be reallocated among the other cities in the county.
- ~~6-7.~~ Within ~~sixty~~thirty days after the end of each ~~fiscal~~calendar year, the board of county commissioners of each county that has received an allocation under this section shall file a report for the ~~fiscal~~calendar year with the ~~tax~~ commissioner, in a format prescribed by the ~~tax~~ commissioner, ~~showing~~including:

- a. ~~The amount received by the county in its own behalf, the amount of those funds expended for each purpose to which funds were devoted, and the share of county property tax revenue expended for each of those purposes, and the amount of those funds unexpended at the end of the fiscal year.~~The county's statement of revenues and expenditures; and
- b. The amount available in the county infrastructure fund for allocation to or for the benefit of townships or school districts, the amount allocated to each organized township or school district and the amount expended from each such allocation by that township or school district, the amount expended by the board of county commissioners on behalf of each unorganized township for which an expenditure was made, and the amount available for allocation to or for the benefit of townships or school districts which remained unexpended at the end of the fiscal year.

Within ~~sixty~~<sup>fifteen</sup> days after the time when reports under this subsection were due, the tax commissioner shall provide ~~a report~~<sup>the reports</sup> to the legislative council compiling the information from reports received under this subsection.

~~In developing the format for reports under this subsection, the tax commissioner shall consult the energy development impact office and at least two county auditors from oil producing counties.~~

**SECTION 2. 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.**

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. 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 energy conservation and renewable energy sources; for studies for development of cogeneration systems that increase the capacity of a system to produce more than one kind of energy from the same fuel; for studies for development of waste products utilization; and for the making of grants and loans in connection therewith.

2. 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. ~~Sixty~~ 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 ~~for general state purposes~~.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for oil and gas produced after June 30, 2011.

Approved May 17, 2011

Filed May 17, 2011

## CHAPTER 485

### HOUSE BILL NO. 1077

(Representatives Drovdal, Kempenich, Hatlestad, Onstad)  
(Senators Warner, Lyson)

AN ACT to amend and reenact subsections 4 and 5 of section 57-51-15 of the North Dakota Century Code, relating to elimination of the limitation on allocations that may be received by a city under the oil and gas gross production tax; and to provide an effective date.

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

<sup>177</sup> **SECTION 1. AMENDMENT.** Subsections 4 and 5 of section 57-51-15 of the North Dakota Century Code are amended and reenacted as follows:

4. a. Forty-five percent of all revenues allocated to any county for allocation under this subsection must be credited by the county treasurer to the county general fund. However, the allocation to a county under this subdivision must be credited to the state general fund if during that fiscal year the county does not levy 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 of all revenues allocated to any county for allocation under this subsection must be apportioned by the county treasurer no less than quarterly to school districts within the county on the average daily attendance distribution basis, as certified to the county treasurer by the county superintendent of schools. However, no school district may receive in any single academic year an amount under this subsection greater than the county average per student cost multiplied by seventy percent, then multiplied by the number of students in average daily attendance or the number of children of school age in the school census for the county, whichever is greater. Provided, however, that in any county in which the average daily attendance or the school census, whichever is greater, is fewer than four hundred, the county is entitled to one hundred twenty percent of the county average per student cost multiplied by the number of students in average daily attendance or the number of children of school age in the school census for the county, whichever is greater. Once this level has been reached through distributions under this subsection, all excess funds to which the school district would be entitled as part of its thirty-five percent share must be deposited instead in the county general fund. The county superintendent of schools of each oil-producing county shall certify to the county treasurer by July first of each year the amount to which each school district is limited pursuant to this subsection. As used in this subsection, "average daily attendance" means the average daily attendance for the school year immediately preceding the certification by the county superintendent of schools required by this subsection.

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<sup>177</sup> Section 57-51-15 was also amended by section 6 of House Bill No. 1013, chapter 13, and section 1 of Senate Bill No. 2129, chapter 484.

The countywide allocation to school districts under this subdivision is subject to the following:

- (1) The first three hundred fifty thousand dollars is apportioned entirely among school districts in the county.
  - (2) The next three hundred fifty thousand dollars is apportioned seventy-five percent among school districts in the county and twenty-five percent to the county infrastructure fund.
  - (3) The next two hundred sixty-two thousand five hundred dollars is apportioned two-thirds among school districts in the county and one-third to the county infrastructure fund.
  - (4) The next one hundred seventy-five thousand dollars is apportioned fifty percent among school districts in the county and fifty percent to the county infrastructure fund.
  - (5) Any remaining amount is apportioned to the county infrastructure fund except from that remaining amount the following amounts are apportioned among school districts in the county:
    - (a) Four hundred ninety thousand dollars, for counties having a population of three thousand or fewer.
    - (b) Five hundred sixty thousand dollars, for counties having a population of more than three thousand and fewer than six thousand.
    - (c) Seven hundred thirty-five thousand dollars, for counties having a population of six thousand or more.
- c. Twenty percent of all revenues allocated to any county for allocation under this subsection must be apportioned no less than quarterly by the state treasurer to the incorporated cities of the county. Apportionment among cities under this subsection must be based upon the population of each incorporated city according to the last official decennial federal census. ~~A city may not receive an allocation for a fiscal year under this subsection and subsection 5 which totals more than seven hundred fifty dollars per capita. Once this level has been reached through distributions under this subsection, all excess funds to which any city would be entitled except for this limitation must be deposited instead in that county's general fund.~~ 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. If a city receives a direct allocation under subsection 1, the allocation to that city under this subsection is limited to sixty percent of the amount otherwise determined for that city under this subsection and the amount exceeding this limitation must be reallocated among the other cities in the county.
5. a. Forty-five percent of all revenues allocated to a county infrastructure fund under subsections 3 and 4 must be credited by the county treasurer to the county general fund. However, the allocation to a county under this subdivision must be credited to the state general fund if during that fiscal

- year the county does not levy 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 of all revenues allocated to the county infrastructure fund under subsections 3 and 4 must be allocated by the board of county commissioners to or for the benefit of townships in the county on the basis of applications by townships for funding to offset oil and gas development impact to township roads or other infrastructure needs or applications by school districts for repair or replacement of school district vehicles necessitated by damage or deterioration attributable to travel on oil and gas development-impacted roads. An organized township is not eligible for an allocation of funds under this subdivision unless during that fiscal year that township levies at least ten mills for township purposes. For unorganized townships within the county, the board of county commissioners may expend an appropriate portion of revenues under this subdivision to offset oil and gas development impact to township roads or other infrastructure needs in those townships. The amount deposited during each calendar year in the county infrastructure fund which is designated for allocation under this subdivision and which is unexpended and unobligated at the end of the calendar year must be transferred by the county treasurer to the county road and bridge fund for use on county road and bridge projects.
- c. Twenty percent of all revenues allocated to any county infrastructure fund under subsections 3 and 4 must be allocated by the county treasurer no less than quarterly to the incorporated cities of the county. Apportionment among cities under this subsection must be based upon the population of each incorporated city according to the last official decennial federal census. ~~A city may not receive an allocation for a fiscal year under this subsection and subsection 4 which totals more than seven hundred fifty dollars per capita. Once this per capita limitation has been reached, all excess funds to which a city would otherwise be entitled must be deposited instead in that county's general fund.~~ If a city receives a direct allocation under subsection 1, the allocation to that city under this subsection is limited to sixty percent of the amount otherwise determined for that city under this subsection and the amount exceeding this limitation must be reallocated among the other cities in the county.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2011.

Approved April 19, 2011  
Filed April 19, 2011

## CHAPTER 486

### HOUSE BILL NO. 1046

(Legislative Management)  
(Taxation Committee)

AN ACT to create and enact a new subsection to section 57-39.2-04 and chapter 57-65 of the North Dakota Century Code, relating to a sales tax exemption for potash and byproducts of potash and taxation of potash and byproducts; to amend and reenact subsection 32 of section 57-02-08 of the North Dakota Century Code, relating to exemption of minerals subject to in lieu of taxes; to provide for a legislative management study; to provide a statement of legislative intent; to provide a penalty; and to provide an effective date.

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

<sup>178</sup> **SECTION 1. AMENDMENT.** Subsection 32 of section 57-02-08 of the North Dakota Century Code is amended and reenacted as follows:

32. Minerals in place in the earth which at the time of removal from the earth are then subject to taxes imposed under chapter 57-51 ~~or~~, 57-61, or 57-65.

<sup>179</sup> **SECTION 2.** A new subsection to section 57-39.2-04 of the North Dakota Century Code is created and enacted as follows:

Gross receipts from the sale of any potash or byproducts taxable under chapter 57-65.

**SECTION 3.** Chapter 57-65 of the North Dakota Century Code is created and enacted as follows:

#### **57-65-01. Definitions.**

As used in this chapter:

1. "Byproducts" includes any mineral product, or combination or compound thereof, produced during the processing of potash that is sold and includes aluminum, antimony, arsenic, barium, beryllium, bismuth, boron, cadmium, calcium, cerium, cesium, chromium, cobalt, columbium, copper, gallium, gemstones, germanium, gold, gypsum, hafnium, indium, iridium, iron, lanthanum, lead, lithium, magnesium, manganese, mercury, molybdenum, nickel, osmium, palladium, platinum, praseodymium, rare earth metals, rhenium, rhodium, rubidium, ruthenium, samarium, scandium, selenium, silicon, silver, sodium, strontium, tantalum, tellurium, thallium, thorium, tin,

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<sup>178</sup> Section 57-02-08 was also amended by section 1 of House Bill No. 1223, chapter 443, and section 1 of Senate Bill No. 2049, chapter 444, and subsection 7 was repealed by section 2 of House Bill No. 1246, chapter 445.

<sup>179</sup> Section 57-39.2-04 was also amended by section 1 of House Bill No. 1334, chapter 468, section 3 of Senate Bill No. 2172, chapter 465, section 1 of House Bill No. 1424, chapter 467, section 13 of Senate Bill No. 2034, chapter 460, and section 1 of Senate Bill No. 2292, chapter 466.



titanium, tungsten, vanadium, yttrium, zinc, and zirconium. The term does not include oil, natural gas, or liquid hydrocarbon, individually or in any combination, coal, carbon dioxide, or severed sand or gravel subject to an extraction or severance tax under any other provisions of this title.

2. "Commissioner" means the tax commissioner.
3. "Gross receipts" means all revenue valued in money, whether received in money or otherwise, realized by the taxpayer for sale of potash or byproducts, whether the sale is before or after transportation, manufacturing, and processing of the product.
4. "Mining facility" includes contiguous land and all structures and improvements on the mining permit area used for mining potash and byproducts and includes the act, process, or work of extracting potash from its naturally occurring environment and transporting or moving potash or byproducts to the point of processing, use, or sale. The term includes the process of leaching potash from its naturally occurring deposit. The term also includes an "extraction facility" as defined in chapter 38-12.
5. "Mining permit area" means the area covered by a permit issued by the industrial commission to mine potash and potash byproducts.
6. "Person" means every individual, partnership, firm, association, joint venture, corporation, limited liability company, fiduciary, trustee, receiver, administrator, representative of any kind, or any other group or combination acting as a unit.
7. "Potash" includes muriate of potash [the chemical compound potassium chloride, KCl], sulfate of potash [the chemical compound sulfate, K<sub>2</sub>S<sub>04</sub>], and langbeinite [the chemical compound potassium magnesium sulfate, K<sub>2</sub>S<sub>04</sub>\*2MgS<sub>04</sub>], or any other potassium, magnesium, or mixed-potassium salts, and includes ores, intermediates, products, and reaction products of such compounds.
8. "Processing" includes breaking, crushing, cleaning, drying, sizing, milling, treating, heating, separating, compressing, beneficiation, or loading or unloading for any purpose.
9. "Processing plant" means any facility in North Dakota in which potash or byproducts are extracted, recovered, or produced from a mineral resource and includes any facility in North Dakota associated with the mine in which the primary production from the mining facility is processed or refined.
10. "Taxpayer" includes any person that is a producer of potash or potash byproducts subject to the tax imposed under this chapter.

#### **57-65-02. Imposition of tax on potash.**

A tax at the rate of two percent is imposed upon all potash produced within this state. The tax levied attaches to the whole production of potash except any byproducts of potash taxed under section 57-65-03.

1. The tax on potash is assessed against the sales price of the potash in an arm's-length contract between the taxpayer and the purchaser. If a potash sale or transfer is not the result of an arm's-length contract, the tax is calculated by taking a ton of two thousand pounds [907.18 kilograms] of

potash produced times the potash tax rate times the annual average price of potash. The "annual average price of potash" for each twelve-month period beginning July first is the potash producer price index (commodity code PCU212391212391) as calculated and published by the United States department of labor, bureau of labor statistics, for the previous calendar year. For taxable production for the twelve months beginning July 1, 2011, the "annual average price of potash" is three hundred fifty-seven dollars and ten cents.

2. The tax department shall provide the annual average price of potash for the fiscal year to affected taxpayers by written notice mailed before June first.
3. If the potash producer price index is discontinued, a comparable index must be adopted by the department by an administrative rule.

### **57-65-03. Imposition of tax on byproducts of potash production.**

A subsurface mineral tax of four percent is imposed upon the gross value of all subsurface mineral byproducts produced during the processing of potash produced within this state. The tax levied attaches to the whole production of byproducts. Inventory is not taxable until it is sold. The gross value at the processing plant is the price paid for the byproducts under an arm's-length contract between the taxpayer and the purchaser. In the absence of an arm's-length contract, the gross value at the processing plant is established by the price paid under an arm's-length contract, to which the person paying the tax is a party, for the purchase or sale of byproducts of like kind, character, and quality.

### **57-65-04. Type of tax.**

For purposes of interpreting section 5 of article X of the Constitution of North Dakota, relating to federal land bank taxation and to the taxation of other governmental entities if their immunity from taxation has been waived, the tax under this chapter is a real property tax on subsurface mineral-producing estates and interests.

### **57-65-05. Potash and byproducts tax to be in lieu of other taxes.**

The payment of the taxes under this chapter must be in full and in lieu of all ad valorem taxes by the state, counties, cities, school districts, and other taxing districts upon any property rights attached to or inherent in the right to producing potash and potash byproducts; upon producing potash and potash byproducts leases; upon machinery, appliances, and equipment used in and around any well producing potash or potash byproducts and actually used in the operation of the well; and upon any investment in property. The land and the processing plant, mining facility, or satellite facility must be assessed and taxed as other property within the taxing district in which the property is situated. The tax under this chapter is not in lieu of income taxes.

### **57-65-06. Duties of tax commissioner and state treasurer.**

The tax commissioner shall deposit promptly with the state treasurer all moneys collected under this chapter and accompany each remittance, when possible, with a certificate showing the county where the potash and byproducts were processed. The state treasurer, no less than monthly, shall pay over to the county treasurer of the several counties the money to which they are entitled.

**57-65-07. Allocation of revenue.**

The tax collected as provided in this chapter is appropriated and must be apportioned as determined by the sixty-third legislative assembly.

**57-65-08. Returns and payment of tax on monthly basis - Due date - When delinquent - Extensions.**

1. Any person engaged in the production, within this state, of potash or byproducts shall before the twenty-sixth day of the next succeeding month after production, file with the tax commissioner a statement upon forms prescribed by the tax commissioner.
2. The tax under this chapter must be paid on a monthly basis. The tax is due and payable on the twenty-fifth day of the month succeeding the month of production. If the tax is not paid as required by this section, the tax becomes delinquent and must be collected as provided in this chapter.
3. The tax commissioner, upon request and a proper showing of good cause, may grant an extension of time, not to exceed fifteen days, for paying the tax. When the request is granted, the tax is not delinquent until the extended period has expired. A taxpayer who is granted an extension of time for filing a return shall pay, with the tax, interest at the rate of twelve percent per annum from the date the tax was due to the date the tax is paid.
4. All calculations of the tax under this chapter, including production, distribution, and claims for credit or refund, are based on the month of production and must be credited to that month.
5. The tax commissioner may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, that shall have the same validity and consequence as the actual signature and written declaration for a paper return.

**57-65-09. Tax commissioner to audit returns and correct tax.**

1. The tax commissioner may determine whether a return required to be filed with the tax commissioner under this chapter is a true and correct return of gross production, and of the value, of the potash and byproducts. If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient, the tax commissioner shall determine the amount of tax due from any information the tax commissioner may be able to obtain, and, if necessary, may estimate the tax on the basis of external indices.
2. The tax commissioner shall have three years after the due date of the original return or three years after the original return is filed, whichever period expires later, to assess the tax and, if additional tax is due, provide notice of the determination of the additional tax to the taxpayer. If there is a change in tax liability on any return by an amount in excess of twenty-five percent of the amount of tax before any credits, any additional tax determined to be due may be assessed anytime within six years after the due date of the return or six years after the return was filed, whichever period expires later.
3. If a taxpayer files an amended return, the tax commissioner has two years after the return is filed to audit the return and assess any additional tax attributable to the changes or corrections even though other time periods

prescribed in this section for the assessment of tax may have expired. The provisions of this section do not limit or restrict any other time period prescribed in this section for the assessment of tax that has not expired as of the end of the two-year period prescribed in this section.

4. If false or fraudulent information is given in the return, or if the failure to file a return is due to the fraudulent intent or the willful attempt of the taxpayer in any manner to evade the tax, the time limitations in this section do not apply, and the tax may be assessed at any time.
5. If before the expiration of the time periods prescribed in subsections 1, 2, and 3 the tax commissioner and a person consent in writing to an extension of time for the assessment of the tax, an assessment of additional tax may be made at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. If a person refuses to consent to an extension of time or a renewal thereof, the tax commissioner may make an assessment based on the best information available. The period agreed upon in this subsection, including extensions, expires upon issuance of an assessment by the tax commissioner.
6. Any person who consents to an extension of time for assessment of tax must be presumed to have consented to a similar extension for refund.

#### **57-65-10. Interest and penalties.**

1. Reports from the taxpayer are delinquent after the last day fixed for their filing, and every person required to file a report is subject to a penalty of twenty-five dollars per day of delinquency for each property upon which the person fails or refuses to file the reports. The penalties under this subsection are for failure to file reports and are in addition to the penalties imposed by subsection 2 and constitute a lien against the assets of the person failing or refusing to file the reports. The penalties prescribed under this section must be collected in the same manner as potash and byproducts taxes and must be apportioned as other potash and byproducts tax penalties.
2. In addition to the tax and interest prescribed in this chapter, a taxpayer is subject to penalties as follows:
  - a. If any taxpayer, without intent to evade any tax imposed by this chapter, fails to pay the amount shown as tax due on any return filed on or before the due date or extended due date prescribed, there must be added to the tax a penalty of five percent of the tax due, or five dollars, whichever is greater.
  - b. If any taxpayer, without intent to evade any tax imposed by this chapter, fails to file a return on or before the due date or extended due date prescribed, there must be added a penalty equal to five percent of the tax required to be reported, or five dollars, whichever is greater.
  - c. If upon audit of a taxpayer's return additional tax is found to be due, there must be added to the tax the penalty provided in subdivision a or b.
3. In addition to other increases to tax and penalty provided in this chapter, a taxpayer is subject to interest as follows:

- a. Any taxpayer who requests and is granted an extension of time for filing a return shall pay, with the tax, interest on the tax at the rate of twelve percent per annum from the date the tax would have been due if the extension had not been granted to the date the tax is paid.
  - b. If any amount of tax imposed by this chapter is not paid on or before the due date or extended due date for the payment, there must be added to the tax interest at the rate of one percent per month or fraction of a month during which the return was required to be filed or the tax became due.
  - c. If upon audit an additional tax is found to be due, there must be added to the additional tax due interest at the rate of one percent of the additional tax for each month or fraction of a month during which the tax remains unpaid, computed from the due date of the return to the date paid, excepting the month in which the return was required to be filed or the tax became due.
  - d. If the mathematical verification of a taxpayer's return results in additional tax due, there must be added to the additional tax interest at the rate of one percent of the additional tax due for each month or fraction of a month during which the return was required to be filed or the tax became due.
4. The tax commissioner, for good cause shown, may waive the penalty or the interest provided in this section.

#### **57-65-11. Refund claims.**

1. A taxpayer may file a claim for credit or refund of an overpayment of tax within three years of the due date of the return or three years after the return was filed. However, if there is a change in tax liability on any return by an amount in excess of twenty-five percent of the amount of tax before any credits, a claim for refund of tax may be filed within six years after the due date of the return or six years after the return was filed, whichever period expires last.
2. If any taxpayer consents to an extension of time for the assessment of tax under subsection 5 of section 57-65-09, the period of time for filing a claim for credit or refund will be similarly extended. If an assessment is issued under this circumstance, the taxpayer has sixty days from the assessment to file a claim for refund. If a claim for refund is filed in any year extended by an agreement under subsection 5 of section 57-65-09, the tax commissioner may assess additional tax for any year extended by the same agreement which has otherwise expired. The additional assessment is limited to the issues raised in the claim for credit or refund.
3. Every claim for credit or refund must be made by filing with the tax commissioner an amended return, or other report as prescribed by the tax commissioner, accompanied by a statement outlining the specific grounds upon which the claim is based.
4. In all cases of overpayment, duplicate payment, or payment made in error, the tax commissioner shall issue a certificate containing the facts and the amount of the refund to which the taxpayer may be entitled. Upon presentation of the certificate to the office of management and budget, a warrant must be issued to the taxpayer for the purpose of refunding any overpayment, duplicate payment, or payment made in error out of the unapportioned potash and

byproducts tax in the state treasury and a pro rata share must be charged against the county entitled to share in the tax. Interest arising from refunds of overpayments, duplicate payments, and erroneous payments must be allowed and paid at the rate of ten percent per annum and accrues for payment from sixty days after the due date of the return or after the return was filed or after the tax was fully paid, whichever comes later.

### **57-65-12. Minimum refunds and collections.**

1. A refund may not be made by the tax commissioner to any taxpayer unless the amount to be refunded, including interest, is at least five dollars. The tax commissioner shall transfer any amount that is not refunded to a taxpayer under this subsection to the state treasurer for deposit in the same manner as other revenue under this chapter.
2. A remittance of tax need not be made and any assessment or collection of tax may not be made unless the amount is at least five dollars, including penalties and interest.

### **57-65-13. Protest and appeal.**

1. If upon audit the tax commissioner finds additional tax due or disallows a credit or a claim for refund, the tax commissioner shall notify the person of that finding. The notice must inform the person of the reasons for assessment of additional tax or the change in refund or credit claimed. Notice of deficiency must be sent by first-class mail and must set forth the reasons for the finding.
2. A person has thirty days, or ninety days if the person is outside the United States, to file a written protest objecting to the tax commissioner's assessment of additional tax due or disallowance of a credit or a claim for refund. The protest must set forth the basis for the protest and any other information which may be required by the tax commissioner. If a person fails to file a written protest within the time provided, the tax commissioner's finding becomes finally and irrevocably fixed. If a person protests only a portion of the tax commissioner's finding, the portion that is not protested becomes finally and irrevocably fixed.
3. If a protest is filed, the tax commissioner shall reconsider the assessment of additional tax due or disallowance of a credit or claim for refund. The reconsideration may include further examination by the tax commissioner or the tax commissioner's representative of a person's books, papers, records, or memoranda. The tax commissioner, upon request, may grant the person an informal conference.
4. Within a reasonable time after protest, the tax commissioner shall notify the taxpayer of the tax commissioner's reconsideration of assessment of additional tax due or disallowance of a credit or claim for refund. The amount set forth in that notice becomes finally and irrevocably fixed unless the person within thirty days commences formal administrative review as provided for in chapter 28-32 by the filing of a complaint. The complaint must be personally served on the tax commissioner or sent by certified mail.
5. Upon written request, the tax commissioner may grant an extension of time to file a protest as provided for in subsection 2 or an extension of time to commence formal review as provided for in subsection 4.

**57-65-14. Lien for tax - Preservation of lien - Satisfaction of lien.**

1. The tax, penalty, and interest assessed under this chapter is, at all times, a first and paramount lien against the taxpayer's property, both real and personal. The provisions of this chapter requiring the taxpayer to pay the tax do not release the taxpayer from that liability. If the tax, penalty, and interest are not paid, the tax, penalty, and interest may be recovered at the suit of the state, upon relation to the tax commissioner, in any court of competent jurisdiction of the county where any such property, assets, and effects are located.
2. Any judgment creditor or lien claimant acquiring any interest in or lien on any property situated in this state, before the tax commissioner files in the central indexing system maintained by the secretary of state a notice of the lien provided for in this section, takes free of or has priority over the lien. The tax commissioner shall index in the central indexing system the following data:
  - a. The name of the taxpayer.
  - b. The tax identification number or social security number of the taxpayer.
  - c. The name "State of North Dakota" as claimant.
  - d. The date and time the notice of lien was indexed.
  - e. The amount of the lien. The notice of the lien is effective as of eight a.m. of the first day following the indexing of the notice.
3. Upon payment of tax, penalty, and interest, if applicable, or a penalty assessed under section 57-65-10, as to which the tax commissioner has indexed a notice in the central indexing system, the tax commissioner shall index a satisfaction of the lien in the central indexing system.
4. The tax commissioner is exempt from the payment of the fees otherwise provided for by law for the indexing of the lien or satisfaction.

**57-65-15. Delinquent taxes - Sale of property.**

When any tax provided for in this chapter becomes delinquent, the tax commissioner shall issue warrants directed to the sheriff of any county where the tax is due, or any part of the tax accrued, for the collection of the tax, interest, and penalty. The sheriff to whom the warrant is directed shall proceed to levy upon the property, assets, and effects of the person liable for such tax and shall sell the same and make return upon execution. The state of North Dakota, through the tax commissioner, is authorized to make bids at any such sale to the amount of tax, penalty, and costs accrued.

**57-65-16. Bond - Reports - Actions.**

1. The tax commissioner may require a sufficient bond from any person charged with the making and filing of reports and the payment of the taxes imposed under this chapter. The bond must run to the state of North Dakota and must be conditioned upon the making and filing of reports as required by law, upon compliance with the rules and regulations of the tax commissioner, and for the prompt payment by the principal of all taxes justly due the state under this chapter.

2. When any reports required have not been filed, or may be insufficient to furnish all the information required by the tax commissioner, the tax commissioner shall institute in the name of the state of North Dakota upon relation of the tax commissioner any necessary action or proceedings in the courts having jurisdiction to enjoin such person from continuing operations until such reports have been filed as required. In all proper cases an injunction must issue without bond from the state of North Dakota. Upon showing that the state is in danger of losing its claims or the property is being mismanaged, dissipated, or concealed, a receiver must be appointed.

#### **57-65-17. Penalty.**

Any person intentionally violating this chapter is guilty of a class A misdemeanor.

#### **57-65-18. Powers of tax commissioner.**

The tax commissioner is charged with the administration of this chapter and shall enforce the assessment, levy, and collection of taxes imposed under this chapter. The tax commissioner may require any person engaged in the production of subsurface minerals or byproducts to furnish any additional information the tax commissioner determines necessary for the purpose of correctly computing the amount of potash and byproducts tax. The tax commissioner may examine the books, records, and files of such person, and conduct hearings and compel the attendance of witnesses, the production of books, records, and papers of any person, and may make any investigation or hold any inquest determined necessary to a full and complete disclosure of the facts as to the amount of production from any potash mining facility, processing plant, or satellite facility, or of any company or other producer for taxing purposes.

#### **57-65-19. Rules - Legislative intent.**

It is the intention of the legislative assembly that potash mining, environmental protection, and reclamation rules, at a minimum, must establish a high degree of protection for surface owners, surface and underground water, productive capacity of soils, and public health and safety and that the adopting agency will promote participation of public officials and members of the public in counties in which potash mining will be conducted.

**SECTION 4. LEGISLATIVE INTENT - IMPACT LOANS 2013-15 BIENNIUM.** It is the intent of the sixty-second legislative assembly that the sixty-third legislative assembly will provide a source for up to \$2,000,000, or so much of the sum as may be necessary, for loans to potash development-impacted political subdivisions, for the biennium beginning July 1, 2013, and ending June 30, 2015, to be repaid from the future proceeds of tax allocations under chapter 57-65.

**SECTION 5. LEGISLATIVE MANAGEMENT STUDY - POTASH MINING TAXATION.** During the 2011-12 interim, the legislative management shall study potash mining and taxation issues. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-third legislative assembly.

**SECTION 6. EFFECTIVE DATE.** This Act is effective for taxable production occurring after June 30, 2011.

Approved April 28, 2011  
Filed April 28, 2011



# TOWNSHIPS

## CHAPTER 487

### SENATE BILL NO. 2301

(Senators Cook, Stenehjem, Hogue)  
(Representatives Carlson, Belter)

AN ACT to amend and reenact section 58-02-28 of the North Dakota Century Code, relating to disposition of township funds upon dissolution; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 58-02-28 of the North Dakota Century Code is amended and reenacted as follows:

#### **58-02-28. When township dissolved - Disposition of property and records.**

If a majority of all votes cast at the township meeting are in favor of dissolution, the township ceases to be a corporation on the ~~first day of January~~ next succeeding ~~the time of holding such meeting~~ January first. ~~The property belonging to the township, after the~~ After payment of its ~~the township's~~ debts and liabilities, any funds on hand derived from property taxes levied by the township may be allocated among taxpayers of the township in proportion to their relative ownership shares of the taxable valuation of property in the township, any funds on hand from sources other than property taxes levied by the township must be transferred by the township treasurer to the treasurer of the county in which the township is located for deposit in the county general fund, and any real or personal property must be disposed of in the manner directed by a majority of the voters of the township at any special meeting. All of the ~~records of the township~~ records must be turned over for preservation and safekeeping to the county auditor of the county ~~within~~ in which the township ~~lies~~ is located.

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

Approved March 9, 2011  
Filed March 9, 2011

## CHAPTER 488

### SENATE BILL NO. 2219

(Senators Olafson, Andrist, Dotzenrod)  
(Representatives Brandenburg, Monson, Mueller)

AN ACT to amend and reenact section 58-05-12 of the North Dakota Century Code, relating to township officer interest in a township contract.

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

**SECTION 1. AMENDMENT.** Section 58-05-12 of the North Dakota Century Code is amended and reenacted as follows:

#### **58-05-12. Officers interested in contracts of township.**

Except as otherwise provided by this section, no township officer may become a party to or be interested, directly or indirectly, in any contract made by the board of which the officer is a member. Every contract or payment voted for or made contrary to this section is void. Any violation of this section constitutes malfeasance in office which subjects the offending officer to removal from office. A township ~~supervisor~~officer may become a party to or be interested, directly or indirectly, in any contract made by the board if:

1. ~~No other qualified individual is willing to undertake the contract; The officer is qualified to undertake the contract.~~
2. The board, when possible, has requested bids or offers from at least two persons.
3. The board gives due consideration to all reasonable bids or offers to provide the same service to the township.
4. The officer having an interest in the contract is a supervisor, that supervisor does not vote on the contract; and
3. ~~The the other members of the board of supervisors vote unanimously in favor of the contract.~~
5. The officer having an interest in the contract is not a supervisor, all members of the board of supervisors vote unanimously in favor of the contract.

Approved April 26, 2011  
Filed April 26, 2011

## CHAPTER 489

### HOUSE BILL NO. 1259

(Representatives Froseth, Kretschmar, Maragos)  
(Senators J. Lee, Olafson, Dotzenrod)

AN ACT to amend and reenact sections 58-06-02, 58-07-01, and 58-08-01 of the North Dakota Century Code, relating to compensation of township officers.

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

**SECTION 1. AMENDMENT.** Section 58-06-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **58-06-02. Compensation of supervisors.**

A township supervisor is entitled to receive as compensation for services ~~twenty up to sixty~~ dollars a day for each day necessarily devoted to the work of a supervisor's office not exceeding ~~one two~~ thousand dollars in a calendar year. The electors of the township shall establish the daily compensation rate for township supervisors at each annual township meeting. Additional compensation over ~~one two~~ thousand dollars may be provided for reimbursement of expenses ~~and mileage at a rate not exceeding the allowable mileage rate accepted by the United States internal revenue service~~ as provided in section 44-08-04 and for mileage as provided in section 54-06-09 for each mile [1.61 kilometers] necessarily traveled in the performance of a supervisor's duties.

**SECTION 2. AMENDMENT.** Section 58-07-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **58-07-01. Compensation of clerk.**

The township clerk is entitled to receive as compensation for services ~~twenty up to sixty~~ dollars a day for each day necessarily devoted to the work of the clerk's office not exceeding ~~one two~~ thousand dollars in a calendar year. The electors of the township shall establish the daily compensation rate for the township clerk at each annual township meeting. Additional compensation over ~~one two~~ thousand dollars may be provided for reimbursement of expenses ~~and mileage at a rate not exceeding the allowable mileage rate accepted by the United States internal revenue service~~ as provided in section 44-08-04 and for mileage as provided in section 54-06-09 for each mile [1.61 kilometers] necessarily traveled in the performance of the clerk's duties. In those townships in which the offices of township clerk and treasurer have been merged, the ~~person individual~~ elected to fill the new office is entitled to receive compensation as township clerk only.

**SECTION 3. AMENDMENT.** Section 58-08-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **58-08-01. Compensation of treasurer.**

The township treasurer is entitled to receive as compensation for services ~~twenty sixty~~ dollars a day for each day necessarily devoted to the work of the

treasurer's office not exceeding ~~one~~two thousand dollars in a calendar year. The electors of the township shall establish the daily compensation rate for the township treasurer at each annual township meeting. Additional compensation over ~~one~~two thousand dollars may be provided for reimbursement of expenses ~~and mileage at a rate not exceeding the allowable mileage rate accepted by the United States internal revenue service~~as provided in section 44-08-04 and for mileage as provided in section 54-06-09 for each mile [1.61 kilometers] necessarily traveled in the performance of the treasurer's duties. The township treasurer may not be allowed a percentage on the balance turned over to the treasurer's successor in office.

Approved April 25, 2011  
Filed April 25, 2011

# TRUSTS

## CHAPTER 490

### HOUSE BILL NO. 1135

(Judiciary Committee)

(At the request of the Commission on Uniform State Laws)

AN ACT to create and enact section 59-09-13 of the North Dakota Century Code, relating to the insurable interest of a trustee.

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

**SECTION 1.** Section 59-09-13 of the North Dakota Century Code is created and enacted as follows:

**59-09-13. Insurable interest of trustee.**

1. In this section, "settlor" means a person, including a person for which a fiduciary or agent is acting, that executes the trust instrument.
2. A trustee of a trust has an insurable interest in the life of an individual insured under a life insurance policy that is owned by the trustee of the trust acting in a fiduciary capacity or that designates the trust itself as owner if, on the date the policy is issued:
  - a. The insured is a settlor of the trust or an individual in whom a settlor of the trust has, or would have had if living at the time the policy was issued, an insurable interest; and
  - b. The life insurance proceeds must be primarily for the benefit of trust beneficiaries that have:
    - (1) An insurable interest in the life of the insured; or
    - (2) A substantial interest engendered by love and affection in the continuation of the life of the insured. If the trust beneficiaries do not already have an insurable interest under paragraph 1, the trust beneficiaries must be related within the third degree or closer, as measured by the civil law system of determining degrees of relation, either by blood or law, to the insured, or must be stepchildren of the insured.
3. This section does not authorize any practice that is prohibited by chapter 26.1-33.4.

Approved March 28, 2011

Filed March 28, 2011

# WATERS

## CHAPTER 491

### SENATE BILL NO. 2282

(Senators Fischer, Wardner, Dotzenrod)  
(Representatives Hofstad, Kreun, Onstad)

AN ACT to amend and reenact sections 61-02-12 and 61-04.1-07 of the North Dakota Century Code, relating to compensation of members of the state water commission and members of the North Dakota atmospheric resource board.

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

**SECTION 1. AMENDMENT.** Section 61-02-12 of the North Dakota Century Code is amended and reenacted as follows:

**61-02-12. Compensation and expenses of appointive members of commission.**

Each appointive member of the commission is entitled to receive ~~sixty-two dollars and fifty cents~~ compensation per day in the amount provided for members of the legislative management under section 54-35-10 and must be reimbursed for expenses in the amounts provided in sections 44-08-04 and 54-06-09 while attending meetings of the commission or, at the discretion of the member, may receive either per diem compensation or expenses in those amounts while otherwise engaged in official business of the commission, including time of travel between home and the place at which the member performs such duties.

**SECTION 2. AMENDMENT.** Section 61-04.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**61-04.1-07. Board officers - Compensation.**

All members of the board, with the exception of the chairman, are voting members. The board shall elect annually from its membership a chairman, vice chairman, and secretary. A majority of the members constitute a quorum for the purpose of conducting the business of the board. Board members who are not full-time salaried employees of this state are entitled to receive compensation of ~~sixty-two dollars and fifty cents~~ per day in the amount provided for members of the legislative management under section 54-35-10 and must be reimbursed for their mileage and expenses in the amounts provided by sections 44-08-04 and 54-06-09. All other members of the board must be reimbursed for necessary travel and other expenses incurred in the performance of the business of the board in the amounts provided in sections 44-08-04 and 54-06-09.

Approved April 19, 2011  
Filed April 19, 2011

## CHAPTER 492

### SENATE BILL NO. 2068

(Natural Resources Committee)  
(At the request of the State Water Commission)

AN ACT to create and enact section 61-02-14.2 of the North Dakota Century Code, relating to the state engineer's authority to execute contracts on behalf of the state water commission.

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

**SECTION 1.** Section 61-02-14.2 of the North Dakota Century Code is created and enacted as follows:

**61-02-14.2. Commission contracts may be executed by state engineer.**

The state engineer, or the state engineer's authorized designee, may execute contracts approved by the commission.

Approved April 19, 2011

Filed April 20, 2011

## CHAPTER 493

### HOUSE BILL NO. 1413

(Representatives Hofstad, D. Johnson)  
(Senator Oehlke)

AN ACT to amend and reenact subsections 1 and 7 of section 61-03-21.3 of the North Dakota Century Code, relating to removal of dangers in or on the bed of navigable waters; and to declare an emergency.

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

<sup>180</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 61-03-21.3 of the North Dakota Century Code is amended and reenacted as follows:

1. If the state engineer finds that buildings, structures, boat docks, debris, or other manmade objects, except a fence or corral, situated in, on the bed of, or adjacent to waters that have been determined to be navigable by a court are, or are ~~imminently~~ likely to be, a menace to life or property or public health or safety, the state engineer ~~shall~~ may issue an order to the person responsible for the object. ~~The~~ If the state engineer issues an order, the order must specify the nature and extent of the conditions, the action necessary to alleviate, avert, or minimize the danger, and a date by which that action must be taken. If the state engineer determines that an object covered by flood insurance is ~~imminently~~ likely to be a menace to life or property or public health or safety, the date specified in the order for action to be taken may not precede the date on which the person is eligible to receive flood insurance proceeds. If a building, structure, boat dock, debris, or other manmade object, except a fence or corral, is partially or completely submerged due to the expansion of navigable waters, the person responsible is the person who owns or had control of the property on which the object is located or the person who owned or had control of the property immediately before it became submerged by water.

<sup>181</sup> **SECTION 2. AMENDMENT.** Subsection 7 of section 61-03-21.3 of the North Dakota Century Code is amended and reenacted as follows:

7. If the state engineer has issued an order under this section with regard to a building, structure, boat dock, debris, or other manmade object that the state engineer has determined is ~~imminently~~ likely to be a menace to life or property or public health or safety, and it later becomes known that the object would not have become a menace, a person who has taken action required by the state engineer's order is entitled to compensation in an amount equal to the value of any property destroyed and reasonable costs incurred as a result of complying with the state engineer's notice.

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<sup>180</sup> Section 61-03-21.3 was also amended by section 2 of House Bill No. 1413, chapter 493.

<sup>181</sup> Section 61-03-21.3 was also amended by section 1 of House Bill No. 1413, chapter 493.



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

Approved April 19, 2011  
Filed April 20, 2011

## CHAPTER 494

### HOUSE BILL NO. 1107

(Energy and Natural Resources Committee)  
(At the request of the State Engineer)

AN ACT to amend and reenact section 61-04-01.1, subsection 5 of section 61-04-05, and section 61-04-05.1 of the North Dakota Century Code, relating to definitions and informational and adjudicative proceedings on a water permit application.

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

**SECTION 1. 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 an appeal of a recommended decision prepared by the state engineer for a water permit application.
2. "Beneficial use" means a use of water for a purpose consistent with the best interests of the people of the state.
- ~~2-3.~~ "Commission" means the state water commission.
- ~~3-4.~~ "Domestic use" means the use of water by an individual, or by a family unit, or household, 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 ~~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, when the water is supplied by the individual or family unit. Also included within this use are "domestic rural uses" which must be defined by the state engineer by rule.
- ~~4-5.~~ "Fish, wildlife, and recreation" 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.
- ~~5-6.~~ "Industrial use" means the use of water for the furtherance of a commercial enterprise wherever located, including manufacturing, mining, or processing.
- ~~6-7.~~ "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. "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.

- ~~7-9.~~ "Livestock use" means the use of water for drinking purposes by herds, flocks, or bands of animals kept for commercial purposes.
- ~~8-10.~~ "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.
- ~~9-11.~~ "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.
- ~~10-12.~~ "Rural water system" means a water supply system designed to serve regional needs.
- ~~11-13.~~ "Water of the state" or "waters of the state" means those waters identified in section 61-01-01.

**SECTION 2. AMENDMENT.** Subsection 5 of section 61-04-05 of the North Dakota Century Code is amended and reenacted as follows:

- 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.

**SECTION 3. AMENDMENT.** Section 61-04-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-05.1. Comments - Hearing.**

- 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 address of the person filing the comments.
- 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 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 in writing approval or disapproval of the application or that the application be held in abeyance. A copy of the recommended decision must be mailed to the applicant and any person who filed written comments.
- ~~3-5.~~ Within thirty days of service of the recommended decision, the applicant and any person who would be aggrieved by the decision and who filed written comments by the date specified under subsection 5 of section 61-04-05 may file additional written comments with the state engineer or request a hearingan adjudicative proceeding on the application, or both. A request for a hearingan 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 hearingproceeding. If a request for a hearingan 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 a hearingan adjudicative proceeding is made, ~~or and~~ if the state engineer determines a hearingan adjudicative proceeding 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 hearingadjudicative proceeding and serve a copy of the notice of hearingadjudicative 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.
4. ~~If two or more municipal or public use water facilities request the 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.~~

Approved March 14, 2011  
Filed March 14, 2011

## CHAPTER 495

### SENATE BILL NO. 2283

(Senators Fischer, Dotzenrod)  
(Representatives Hofstad, Kreun)

AN ACT to amend and reenact section 61-21-47 of the North Dakota Century Code, relating to drainage project expenditures in excess of the maximum levy.

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

**SECTION 1. AMENDMENT.** Section 61-21-47 of the North Dakota Century Code is amended and reenacted as follows:

#### **61-21-47. Expenditures in excess of maximum levy.**

If the cost of maintenance, cleaning out, and repairing any drain shall exceed the amount produced by the maximum levy of ~~one dollar and fifty cents~~ two dollars per acre [.40 hectare] in any year, with the amount accumulated in the drainage fund, the board may proceed with such cleaning out and make an additional levy only upon petition of at least sixty-one percent of the affected landowners. The percentage of the affected landowners signing such petition shall be determined in accordance with the weighted voting provisions in section 61-21-16.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 496

### HOUSE BILL NO. 1318

(Representatives Pollert, Hofstad, Onstad)  
(Senators Klein, Lyson, Wanzek)

AN ACT to create and enact chapter 61-24.8 of the North Dakota Century Code, relating to creation of special assessment districts for irrigation works by the Garrison Diversion Conservancy District; to amend and reenact section 54-35-02.7 of the North Dakota Century Code, relating to membership and duties of the water-related topics overview committee; to provide for reports to the state water commission; and to provide an expiration date.

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

**SECTION 1. AMENDMENT.** Section 54-35-02.7 of the North Dakota Century Code is amended and reenacted as follows:

**54-35-02.7. (Effective through November 30, 2013) Water-related topics overview committee - Duties.**

The legislative management, during each interim, shall appoint a water-related topics overview committee in the same manner as the legislative management appoints other interim committees. The committee must meet quarterly and is responsible for legislative overview of water-related topics and related matters and for any necessary discussions with adjacent states on water-related topics. During the 2011-12 interim, the committee shall review the state's irrigation laws and rules and evaluate the process of the prioritization of water projects. The committee consists of ~~nineteen~~ thirteen members and the legislative management shall designate the chairman of the committee. The committee shall operate according to the statutes and procedure governing the operation of other legislative management interim committees.

**(Effective after November 30, 2013) Garrison diversion overview.** The legislative management is responsible for legislative overview of the Garrison diversion project and related matters and for any necessary discussions with adjacent states on water-related topics.

**SECTION 2.** Chapter 61-24.8 of the North Dakota Century Code is created and enacted as follows:

**61-24.8-01. Definitions.**

As used in this chapter:

1. "Auditor" means the county auditor.
2. "Board" means the board of directors of the Garrison Diversion Conservancy District.
3. "Bond" means any revenue bond, refunding bond, improvement bond, or other evidence of indebtedness of the district issued under this chapter.

4. "Direct benefit" means water is delivered to a tract of land.
5. "Director" means a member of the board of directors.
6. "District" means the Garrison Diversion Conservancy District.
7. "Federal agency" includes the United States, the president of the United States, or any agency, instrumentality, or corporation of the United States which has been or may be designated or created by or pursuant to any act or acts or joint resolutions of the Congress of the United States or which may be owned or controlled, directly or indirectly, by the United States.
8. "Holder of bonds" or "bondholder", or any similar term, means any person who is the registered owner of any outstanding revenue bond, improvement bond, or refunding bond.
9. "Law" means any statute of this state.
10. "Project" means any work, undertaking, enterprise, or any combination of two or more projects, which the district is authorized to construct. The term includes all irrigation improvements, betterments, extensions, and replacements of work, undertaking, or enterprises, and all appurtenances, facilities, easements, lands, rights in land, water rights, contract rights, approaches, dams, reservoirs, generating stations, trunk connections, other water mains, filtration works, pumping stations, equipment, franchises, and structures in connection with or incidental to any irrigation work, undertaking, or enterprise the district is authorized to construct.
11. "Refinancing" means funding, refunding, paying, or discharging by means of refunding bonds or the proceeds from the sale of refunding bonds, all or any part of any notes, bonds, or other obligations issued to finance or to aid in financing the acquisition, construction, or improvement of a project.
12. "Refunding bonds" means notes, bonds, certificates, or other obligations of the district issued under this chapter, the proceeds of which are to be used to pay the principal of or interest on any outstanding bonds or other obligations.
13. "Revenues" means all fees, tolls, rates, rentals, and charges levied and collected by the district in connection with, and all other income and receipts of whatever kind or character derived by the district from, the operation of any project.
14. "State engineer" has the same meaning as provided in chapter 61-03.
15. "Warrant" means an order drawn by the proper official of the district on its treasury, the warrant to be so drawn that when signed by the district treasurer in an appropriate place it becomes a check on the depository of the district, and a warrant upon the treasury may not be delivered or mailed to the payee or the payee's agent or representative until the warrant has been signed by the district treasurer and entered on the district's books as a check drawn on a bank depository.

### **61-24.8-02. Financing project through improvement bonds or special assessments - Apportionment of benefits.**

The board may acquire needed interest in property and provide for the cost of construction, alteration, repair, operation, and maintenance of a project with funds raised by special assessments. The board may issue improvement bonds in anticipation of the levy and collection of special assessments. If the board decides to acquire property or interests in property to construct, operate, alter, repair, or maintain a project with funds raised in whole or in part through special assessments, the assessments must be apportioned to and spread in proportion to direct benefits accruing to lands or premises benefited by the project. The board shall assess the proportion of the cost of the project, or the part of the cost to be financed with funds raised through levy and collection of special assessments which any lot, piece, or parcel of land bears in proportion to the direct benefits accruing to the property that is benefited.

### **61-24.8-03. Resolution authorizing project and the issuance of revenue bonds.**

The acquisition, construction, reconstruction, improvement, betterment, or extension of any project and the issuance of bonds in anticipation of the collection of special assessments or of the revenues of such project to provide funds to pay the associated costs may be authorized by a resolution of the board adopted after appropriate notice by the affirmative vote of a majority of the board. Unless otherwise provided in the resolution, the resolution under this section takes effect immediately and need not be laid over, published, or posted.

### **61-24.8-04. Construction.**

Powers under this chapter are in addition and supplemental to and not in substitution for, and the limitations imposed by this chapter do not affect the powers conferred by, any other law. Bonds may be issued under this chapter without regard to any other laws of this state, except as provided in section 61-24-29. The project may be acquired, purchased, constructed, reconstructed, improved, bettered, and extended, and bonds may be issued under this chapter for those purposes, notwithstanding that any other law may provide for the acquisition, purchase, construction, reconstruction, improvement, betterment, and extension of a like project or for the issuance of bonds for like purposes, and without regard to the requirements, restrictions, debt, or other limitations or other provisions contained in any other law, including any requirement for any restriction or limitation on the incurring of indebtedness or the issuance of bonds. If this chapter is inconsistent with any other law of this state, the provisions of this chapter are controlling with reference to the issuance of bonds.

### **61-24.8-05. Power of district to defray expense of improvements by special assessments.**

Upon complying with this chapter, the district may defray the expense of any or all of the improvements by special assessments, including the construction of all or part of an irrigation water supply works or any improvement, extension, or replacement of such works, including the construction and erection of wells, intakes, pumping stations, settling basins, filtration plants, standpipes, water towers, canals, ditches, aqueducts, reservoirs, water mains, and outlets, and all other appurtenances, contrivances, and structures used or useful for a central supply works. In planning an improvement project, the board may include in the plans any and all items of work



and materials, which in its judgment are necessary or reasonably incidental to the completion of an improvement project of that type.

**61-24.8-06. Condemnation of land and rights of way for special improvements - Taking of possession - Trial - Appeal - Vacation of judgment.**

When property required to make any improvement authorized by this chapter is to be taken by condemnation proceedings, the court, upon request by resolution of the board of the district making the improvement, shall call a special term of court for the trial of the proceedings and may summon a jury for the trial. The proceedings must be instituted and prosecuted in accordance with chapter 32-15, except that when the interest sought to be acquired is a right of way for the laying of any main, pipe, ditch, canal, aqueduct, or flume for conducting water, whether within or without the district, the district may make an offer to purchase the right of way and may deposit the amount of the offer with the clerk of the district court of the county in which the right of way is located, and may then take possession of the right of way. The offer must be made by resolution of the board of the district, and a copy of the resolution must be attached to the complaint filed with the clerk of court in accordance with section 32-15-18. The clerk shall immediately notify the owners of the land on which the right of way is located of the deposit by causing a notice to be appended to the summons when served and published in the proceedings as provided in the North Dakota Rules of Civil Procedure stating the amount deposited or agreed in the resolution to be deposited. The owner may then appeal to the court by filing an answer to the complaint in the manner provided in the North Dakota Rules of Civil Procedure and may have a jury trial, unless a jury is waived, to determine the damages. However, upon due proof of the service of the notice and summons and upon deposit of the aggregate sum agreed in the resolution, the court without further notice may make and enter an order as authorized by section 16 of article I of the Constitution of North Dakota. If under laws of the United States proceedings for the acquisition of any right of way are required to be instituted in or removed to a federal court, the proceedings may be taken in that court in the same manner and with the same effect as provided in this section and the clerk of the district court of the county in which the right of way is located shall perform any and all of the duties set forth in this section if the clerk is directed to do so by the federal court. The proceedings must be determined as speedily as practicable. An appeal from a judgment in the condemnation proceedings must be taken within sixty days after the entry of the judgment and appeal must be given preference by the supreme court over all other civil cases except election contests. No final judgment in the condemnation proceedings awarding damages to property used by the district for irrigation or other purposes may be vacated or set aside if the district pays to the defendant, or into court for the defendant, the amount awarded in cash. The district may levy special assessments within the district to pay all or part of the judgment. To provide funds for the payment of the judgment or for the deposit of the amount offered for purchase of a right of way, the district may issue bonds on the fund of the improvement district as provided in section 61-24.8-09 in anticipation of the levy and collection of special assessments or revenues to be appropriated to the fund in accordance with this chapter. The bonds may be issued upon or after the commencement of the condemnation proceedings. Upon the failure of the district to make payment in accordance with this section, the judgment in the condemnation proceedings may be vacated.

**61-24.8-07. Improvement districts to be created.**

For an improvement project under section 61-24.8-05 and defraying the cost of the project by special assessments, the district may create improvement districts, and may extend any such district when necessary. The special improvement district must be created by resolution. The special improvement district must be directly

designated by a name appropriate to the type of improvement for which it is created and by a number distinguishing it from other improvement districts. For examinations or surveys, the board or its employees, after written notice to each landowner, may enter upon any land on which the proposed project is located or any other lands necessary to gain access.

#### **61-24.8-08. Size and form of improvement districts - Regulations governing.**

Any improvement district created by the district may embrace two or more separate property areas. Each improvement district must be of such size and form as to include all properties, which in the judgment of the board, after consultation with the engineer planning the improvement, will be benefited by the construction of the improvement project which is proposed to be made in or for the district, or by any portion of the project. A single district may be created for an improvement of the type specified in section 61-24.8-07, notwithstanding any lack of uniformity among the types, items, or quantities of work and materials to be used at particular locations throughout the improvement district. The jurisdiction of the district to make, finance, and assess the cost of any improvement project may not be impaired by any lack of commonness, unity, or singleness of the location, purpose, or character of the improvement, or by the fact that any one or more of the properties included in the improvement district is subsequently determined not to be benefited by the improvement, or by a particular portion of the improvement project, and is not assessed for that purpose. The board may omit from an improvement district property within the improvement district limits. The board may by resolution enlarge an improvement district in which an improvement is proposed, under construction, or in existence upon receipt of a petition signed by the owners of all of the area to be added to the district.

#### **61-24.8-09. Engineer's report required - Contents.**

After a special improvement district has been created, the board, if the board determines it necessary to make any of the improvement set out in section 61-24.8-05 in the manner provided in this chapter, shall direct the engineer for the district, or some other competent engineer, to prepare a report as to the general nature, purpose, and feasibility of the proposed improvement. The engineer shall prepare profiles, plans, and specifications of the proposed project and estimates of the total cost. The estimate of costs prepared by the engineer must include acquisition of right of way and other costs specified in section 61-24.8-19 and must be in sufficient detail to allow the board to determine the probable share of the total costs that will be assessed against each of the affected landowners in the proposed assessment district.

#### **61-24.8-10. Approval of plans, specifications, and estimates.**

After receiving the engineer's report required by section 61-24.8-09, the board may direct the engineer to prepare detailed plans and specifications for construction of the improvement. The plans and specifications must be approved by a resolution of the board.

#### **61-24.8-11. District engineer to retain copy of plans, specifications, and estimates - Sale of copies.**

The engineer acting for the district shall retain a copy of the plans, specifications, and estimates that have been prepared for any improvement. The engineer shall furnish copies at the request of any person at a reasonable cost.

### **61-24.8-12. Plans, specifications, and estimates filed in office of district.**

The plans, specifications, and estimates prepared as directed under section 61-24.8-10 are the property of the district, must be filed in the district office, and must remain on file subject to inspection by any interested person.

### **61-24.8-13. Hearing - Notice - Contents.**

Upon the filing of the engineer's report provided for in section 61-24.8-09, and after satisfying the requirements of section 61-24.8-10, the board shall fix a date and place for public hearing on the proposed project. The place of hearing must be in the vicinity of the proposed project and must be convenient and accessible for the majority of the landowners subject to assessment for the project or whose property is subject to condemnation for the proposed project. The board may appoint a hearing officer or a committee of the board to conduct the hearing. The board shall cause a complete list of the benefits and assessments to be made, setting forth each lot, piece, or parcel of land assessed, the amount each is benefited by the improvement, and the amount assessed against each. At least fourteen days before the hearing, the board shall file with the county auditor of each county in which the project is or will be located the list showing the percentage assessment and approximate assessment in dollars against each parcel of land benefited by the proposed project. Notices of the hearing must contain the time and place where the board will conduct the hearing. The notice of hearing must specify when and where votes concerning the proposed project may be filed and contain an assessment list showing the percentage assessment and approximate assessment in dollars against each parcel of land benefited by the proposed project. The board shall cause the notice of hearing to be published once a week for two consecutive weeks in newspapers of general circulation in the area in which the affected landowners reside and in the official county newspaper of each county in which the benefited lands are located. The date set for the hearing may not be fewer than fourteen days after the first publication of the notice. A record of the hearing must be made by the board, including a list of affected landowners present in person or by agent, and the record must be preserved in the minutes of the meeting. Affected landowners to be assessed must be informed at the hearing of the probable total cost of the project and their individual share of the cost and the portion of their property, if any, to be condemned for the project.

### **61-24.8-14. Voting on proposed projects.**

At the hearing, the affected landowners must be informed when and where votes concerning the proposed project may be filed. Affected landowners to be assessed have thirty days after the date of the hearing to file their votes with the secretary of the district. Once the deadline for filing votes has been reached, no more votes may be filed and no person may withdraw a vote. Any withdrawal of a vote concerning the proposed project before that time must be in writing. When the votes have been filed and the deadline for filing votes has passed, the board shall immediately determine whether the project is approved. If the board finds that one hundred percent of the total votes filed are for the proposed project, then the vote constitutes an affirmation of the project and the board shall issue an order establishing the proposed project and may proceed, after complying with the requirements of sections 61-24.8-17 and 61-24.8-18, to contract or provide for the construction or maintenance of the project in substantially the manner and according to the forms and procedure provided in section 61-24.8-41. The board may enter any agreement with any federal or state agency under the terms of which the contract for the project is to be let by the federal agency, the state agency, or a combination thereof. In projects where there is an agreement that a party other than the board will let the contract, the board may dispense with all of the requirements of section 61-24.8-41. Upon making an order

establishing or denying establishment of a project, the board shall publish notice of the order in a newspaper of general circulation in the area in which the affected landowners reside and in the official county newspaper of each county in which the benefited lands are located. Any right of appeal begins to run on the date of publication of the notice.

#### **61-24.8-15. Voting right or powers of landowners.**

In order that there may be a fair relationship between the amount of liability for assessments and the power of objecting to the establishment of a proposed project, the voting rights of affected landowners on the question of establishing the project are as provided in this section. The landowner of land affected by the project has one vote for each dollar of assessment to which the land is subject or one vote for each dollar of the assessed valuation of land for which fee title interest will be lost as a result of the project. There may be only one vote for each dollar of assessment, regardless of the number of owners of a tract of land. If more than one owner of a tract of land exists, the votes must be prorated among them in accordance with each owner's property interest. A written power of attorney authorizes an agent to protest a project on behalf of any affected landowner or landowners.

#### **61-24.8-16. Assessment of cost of project.**

When the board proposes to make any special assessment under this chapter, the board or its agent, before the hearing required under section 61-24.8-13, shall inspect any and all lots and parcels of land that may be subject to assessment and shall determine from the inspection the particular lots and parcels of lands which, in the opinion of the board, will be directly benefited by the construction of the work for which the assessment is made and shall assess the proportion of the total cost of acquiring right of way and constructing and maintaining such improvement in accordance with direct benefits received but not exceeding such benefits against any lot, piece, or parcel of land that is directly benefited by the improvement. Property belonging to the United States is exempt from assessment unless the United States has provided for the payment of any assessment that may be levied against its property for benefits received. There must be attached to the list of assessments a certificate signed by the chairman and certified by the secretary that it is a true and correct assessment of the benefit described to the best of their judgment and stating the several items of expense included in the assessment.

#### **61-24.8-17. Assessment list to be published - Notice of hearing - Alteration of assessments - Confirmation of assessment list - Filing.**

After entering an order establishing the project, the board shall cause the assessment list to be published once each week for two successive weeks in the official county newspaper of each county in which the benefited lands are located and in local newspapers of general circulation in the area of the affected lands. The publication must include a notice of the time and place the board will meet to hear objections to any assessment by any interested party or an agent or attorney for that party. The date set for the hearing must be not less than fourteen days after the first publication of the notice. At the hearing, the board may make such alterations in the assessments as in its opinion may be just and necessary to correct any error in the assessment but must make the aggregate of all assessments equal to the total amount required to pay the entire cost of the work for which the assessments are made or the part of the cost to be paid by special assessment. An assessment may not exceed the benefit as determined by the board to the parcel of land assessed. The board then shall confirm the assessment list and the secretary shall attach to the

list a certificate that it is correct as confirmed by the board. The list must be filed in the office of the district secretary.

#### **61-24.8-18. Appeal to state engineer.**

Within ten days after the hearing under section 61-24.8-17, affected landowners subject to assessment, who believe that the assessment has not been fairly or equitably made, or that the project is not properly located or designed, may petition the state engineer to review the assessments and examine the location and design of the proposed project. Upon receipt of a petition, the state engineer shall examine the lands assessed and the location and design of the proposed project. If it appears to the state engineer that the assessments have not been made equitably, the state engineer may proceed to correct the assessments. The state engineer's correction and adjustment of assessments is final. If it appears to the state engineer that the project has been improperly located or designed, the state engineer may order a relocation and redesign, which must be followed in the construction of the proposed project. Any landowner claiming to receive no direct benefit from the project may appeal to the state engineer the question of whether there is any direct benefit. The appeal must be filed with the state engineer within ten days after the hearing on assessments in section 61-24.8-17. The state engineer may not determine the specific amount of benefit upon an appeal by an individual landowner and may determine only if there is any direct benefit to the landowner. The determination of the state engineer upon the appeal is final.

#### **61-24.8-19. When assessments may be made.**

After the requirements of this chapter have been satisfied and a contract and bond for any work for which a special assessment is to be levied have been approved by the board, the board may direct special assessments to be levied for the payment of appropriate costs and the secretary shall certify to the board the items of total cost to be paid by special assessments so far as they have been ascertained. The certificate must include the estimated construction cost under the terms of any contract; a reasonable allowance for cost of extra work that may be authorized under the plans and specifications; acquisition of right of way; engineering, fiscal agents, and attorney's fees for any services in connection with the authorization and financing of the improvement; cost of publication of required notices; printing of improvement bonds; cost necessarily paid for damages caused by such improvement; interest during the construction period; and all expenses incurred in making the improvement and levy of assessments. A contract or contracts may not be awarded which exceed, by twenty percent or more, the estimated cost of the project as presented to and approved by the affected landowners.

#### **61-24.8-20. Correction of errors and mistakes in special assessments - Requirements governing.**

If mathematical errors or other mistakes occur in making any assessment resulting in a deficiency in that assessment, the board shall cause additional assessments to be made in a manner substantially complying with chapter 40-26 as it relates to special assessments.

#### **61-24.8-21. Lien of special assessment.**

A special assessment imposed by the district, with accrued interest and penalties, is a lien upon the property on which the assessment is levied from the time the assessment list is approved by the board until the assessment is fully paid. The liens have precedence over all other liens except general tax liens and may not be

divested by any judicial sale. Mistake in the description of the property covered by the special assessment lien or in the name of the owner of such property does not defeat the lien if the assessed property can be identified by the description in the assessment list. This chapter must be considered notice to all subsequent encumbrances of the priority of special assessments imposed under this chapter.

#### **61-24.8-22. Irrigation improvements in districts - Paid by service charges.**

The district constructing an irrigation improvement under the special assessment method may resolve in the resolution required by section 61-24.8-07 that a portion of the cost of the improvement must be raised by service charges for the use of the improvement and of the utility of which it forms a part. If the district so resolves, it may determine in its resolutions, and other proceedings relating to the levying of special assessments and the issuing of bonds to pay the cost of such improvement that a specified portion or all of such special assessments may be reduced each year by the amount of revenues on deposit in the fund required by section 61-24.8-36. All of the applicable provisions of this chapter relating to special assessments are applicable to such improvements except as to the portion of the cost of improvements resolved or ordained to be paid by service charges. The board of the district shall provide for the establishment, imposition, and collection of service charges for the services furnished by the improvement and the utility of which it forms a part, and in that connection it has all the rights and powers respecting such service charges as it would have with respect to like matters if the improvement were made in accordance with sections 61-24-22 through 61-24-32. The net revenues derived from the imposition and collection of the service charges or any portion of the service charges as are determined by the board in the resolutions and ordinances must be paid into the appropriate improvement district funds created under section 61-24.8-36. The revenues when collected must be used and applied in the same manner as moneys paid into such funds from the collection of special assessments. The board in issuing bonds to finance any such improvement in its resolutions may establish an assessment reserve in the fund of the improvement district, to which it may appropriate net revenues of the utility or system from time to time received in excess of amounts required, with special assessments then on hand, to meet the principal and interest next due on the bonds. Before November first of any year, the district may by resolution determine the proportion which the amount then on hand in the assessment reserve, and irrevocably appropriated to the payment of the bond, bears to the aggregate amount of the installment of the special assessments levied for the improvement which is payable in the following year, including interest. The district may direct the auditor to reduce, by not more than a proportionate amount, the total of that installment and interest which would otherwise be placed upon the tax list of the improvement district for the current year against each lot and tract of land assessed or taxed for improvement. If the installment of the special assessment on any property has been prepaid, the board may direct the district to refund, out of the assessment reserve, to the owner of the property at the time of the refund as indicated in the records of the recorder of the county a sum not exceeding a similar proportion of the principal amount of such installment excluding interest.

#### **61-24.8-23. Abbreviations, letters, or figures.**

In all proceedings for the levy and collection of special assessments, abbreviations, letters, and figures may be used to denote all or parts of additions, lots, lands, blocks, sections, townships, ranges, years, days of the month, and amounts of money.

#### **61-24.8-24. Record of improvements - Record as evidence.**

The district office shall keep a complete record of all the proceedings taken in the matter of making any improvements under this chapter. The record must include all reports and confirmations, all petitions, orders, notices and proofs of publication, and resolutions of the board. The record, a certified transcript of the record, or the original papers, proofs of publications, orders, or resolutions on file in the office must be admitted in evidence in any court or place in this state without further proof as evidence of the facts in those documents.

#### **61-24.8-25. Defects and irregularities in improvement proceedings.**

Defects and irregularities in any proceedings had or to be had under this chapter relating to district improvements by the special assessment method, if the proceedings are for a lawful purpose and are unaffected by fraud and do not violate any constitutional limitation or restriction, do not invalidate the proceedings. No action may be commenced or maintained and no defense or counterclaim in any action may be recognized in the courts of this state founded on any such defects or irregularities in the proceedings unless commenced within thirty days of the adoption of the resolution of the board awarding the sale of bonds to finance the improvement.

#### **61-24.8-26. Payment of special assessments - Interest.**

All special assessments levied under this chapter may be paid without interest within ten days after they have been approved by the board and thereafter bear interest at an annual rate not exceeding one and one-half percentage points above the average net annual interest rate on any bonds for the payment of which they are pledged on the total amount remaining unpaid.

#### **61-24.8-27. Lien between vendor and vendee of special assessments.**

As between a vendor and vendee of real property, unless the purchase contract otherwise provides, the installment of all special assessments for local improvements which are required to be certified and returned to the county auditor in each year become a lien upon the real property upon which they are assessed from and after the first day of December in that year.

#### **61-24.8-28. Irrigation special assessments extended over a period of not more than thirty years.**

Special assessments for the payment of the cost of constructing any irrigation works are payable in equal annual amounts, or in such annual amounts as will permit the annual increase in payment of principal to approximate the annual decrease in the interest on amounts remaining unpaid, extending over a period of not exceeding thirty years as the board may fix by resolution.

#### **61-24.8-29. Payments in full of assessments - Payments to county treasurer or district treasurer - Receipts.**

The owner of any property against which an assessment has been made under this chapter for the cost of any improvement may pay in full or in part the amount remaining unpaid and the unpaid accumulated interest. The payment in full discharges the lien of the assessment upon that property. The payment may be made to the county treasurer upon all installments of the assessments which have been certified to the county auditor, and may be made to the district treasurer upon all portions of the assessment which have not been certified. Any person desiring to pay

any portion of the assessment to the district treasurer shall obtain from the district treasurer a certificate of the amount due upon the assessment which has not been certified to the county auditor and shall present the certificate to the district treasurer. The district treasurer shall receive and collect that amount and issue a receipt to the person paying the assessment. The district treasurer shall note upon the treasurer's records the payment of the assessment.

### **61-24.8-30. Certification of assessments to county auditor.**

When the board, by resolution, has caused special assessments to be levied to cover the cost of constructing a project the board shall determine the rate of interest unpaid special assessments are to bear, which rate may not exceed one and one-half percent above the bond rate. Interest on unpaid special assessments commences on the date the assessments are finally confirmed by the board. Special assessments may be certified and made payable in equal annual installments, the last of which must be due and payable not more than thirty years after the date of the bonds to be paid. The secretary of the district shall certify to the county auditor of the county in which the improvement district is situated, or if the improvement district embraces more than one county to the county auditor of each county in which improvement district lands subject to such special assessments are situated, the total amount assessed against each piece, parcel, lot, or tract of land. The secretary of the district also shall file with the county auditor of each county in which district lands lie a statement showing the cost of the project and the part of the project to be financed by special assessments. Funds needed to pay the cost of maintaining a project may be raised in the same manner as funds were raised to meet construction costs. If the project was financed in whole or in part through the use of special assessments, the board shall prorate the cost of construction. The district treasurer annually shall certify to the county auditor all uncertified installments of assessments which are to be extended upon the tax lists of the improvement district for the current year, in the manner provided in this section. The annual certification must continue until the amount of moneys on deposit in the fund established under section 61-24.8-36 is sufficient to cover outstanding principal of and interest on any obligations issued to fund the projects, and in addition, to repay the district for any payments made by the district to fund deficiencies in the fund established under section 61-24.8-36.

### **61-24.8-31. District treasurer to insert amount of improvements in county real estate book or other forms - Regulations governing.**

The district treasurer shall notify the county auditor not later than August twentieth in each year of any special assessments that were made in the improvement district in addition to those reported in the previous year. The county auditor shall make and deliver to the district treasurer on or before September twentieth each year a copy of the real estate assessment book or other forms for the current year covering all additions in which any special assessments have existed and where any will appear for the current year as advised by the district treasurer. The district treasurer shall insert in the proper columns under the appropriate headings the amount of each of the installments of the assessments on the lots or subdivisions of lots or tracts of land which are to be extended upon the tax lists of the improvement district for the current year. The district treasurer shall show the total amount of special assessments certified to the county auditor for the current year. If a division of property has been made since the original assessment, the district treasurer shall make or cause to be made the proper division of the special assessments on the lots or tracts of land in the same manner as general taxes are divided and assessed as furnished by the county auditor. The district treasurer shall certify the special assessments to the county auditor by November first of each year.



**61-24.8-32. Extension of special assessments on tax lists - Collection - Payment over to district.**

The county auditor shall extend the special assessments upon the improvement tax lists of the district for the current year and the assessments with interest and penalties must be collected as general taxes are collected and paid over to the district treasurer and shall be placed by the district treasurer in the respective funds for which they were collected.

**61-24.8-33. Special assessment record book kept by county auditor - Assessments certified for more than one year.**

The county auditor shall keep a special assessment record. When the improvement district causes the installments of special assessments for a period of more than one year to be certified, the county auditor shall cause the certified special assessments to be recorded for the respective years and in the amounts shown in the certificate of the district treasurer. The certificate of the district treasurer must include a list of all lots and tracts of land upon which such assessments are levied, designating the purpose of the assessment, the fund to which it belongs, and the installment of such assessment for each year against each lot or tract, including interest.

**61-24.8-34. County treasurer to certify and receipt for amount of special assessments collected - Contents of certificate - Procedure for abatement.**

Special assessments of any kind certified to the county auditor by the district treasurer must be paid to the county treasurer and included in the receipt required by section 57-20-08. If the county treasurer receives less than the full amount of taxes and special assessments due at any time on any lot or tract of real estate, the county treasurer shall allocate the amount of such payment between taxes and special assessments in proportion to the respective amounts of taxes and special assessments which are then due. When prorating any tax payment received before October fifteenth, the term "due", as it pertains to real estate taxes, includes only the first installment of real estate taxes. Special assessments are not subject to abatement or refund by proceedings under chapter 57-32 but may be reviewed and corrected only in the manner and upon the conditions provided in chapter 40-26. The county treasurer, at the time set by law for the payment to the district treasurer of all the taxes and special assessments collected during the preceding month, shall certify the amounts of special assessments collected. The certificate must state specifically the lot or known subdivision as it appears on the tax books of the county treasurer; the block, addition, amount collected, and amount credited to each lot or known subdivision; and the year for which the sum was collected. The certificate must be furnished to the district treasurer.

**61-24.8-35. Interest and penalties added to special assessments - County treasurer to collect and pay over.**

The county treasurer shall add to all special assessments the same interest and penalties that are added in the case of general taxes and at the same time. The county treasurer shall collect the interest and penalties with the special assessments and shall pay all such interest and penalties collected over to the district treasurer.

**61-24.8-36. Special improvement moneys to be kept separate - Designation and numbering of funds - Diversion of moneys prohibited.**

All special assessments and taxes levied and other revenues pledged under the provisions of this chapter to pay the cost of an improvement constitute a fund for the payment of that cost, including all principal of and interest on bonds and other obligations issued by the district to finance the improvement, and may be diverted to no other purpose. The district treasurer shall hold all moneys received for any such fund as a special fund to be applied to payment for the improvement. Each fund must be designated by the name and number of the improvement district in or for which the special assessments, taxes, and revenues are collected. When all principal and interest on bonds and other obligations of the fund have been fully paid, all moneys remaining in a fund may be transferred into the general fund of the district. Any deficiency in any fund created for the payment of district bonds payable in whole or in part out of collections of special assessment taxes must be the general obligation of the district.

**61-24.8-37. Bonds - When payable - Amounts - Interest.**

At any time after entering a contract for a project to be financed in whole or in part by special assessments, the district may issue temporary and definitive bonds on the project fund created for that purpose in the manner and subject to the limitations prescribed in section 40-24-19. If the bonds are issued to finance an irrigation project, the net revenues derived from the imposition of service charges to be imposed and collected with respect to the project as provided in section 61-24.8-22 may be pledged to payment of those bonds. Bonds issued under this section must be in amounts as in the judgment of the board will be necessary for the project. The bonds must bear interest at a rate or rates and be sold at a price resulting in an average net interest cost not exceeding twelve percent per annum if sold at private sale. There is no interest rate ceiling on bond issues sold at public sale or to the state or any of its agencies or instrumentalities. The bonds must state upon their face the purpose for which they are issued and the project fund from which they are payable and must be signed by the manual or facsimile signature of the chairman of the district board and countersigned by the manual or facsimile signature of the secretary of the district. The bonds must be payable in such amounts as the board determines, extending over a period of not more than thirty years.

**61-24.8-38. Bonds may be used in making payments on contract - Bonds payable out of fund on which drawn - May be used to pay special assessments.**

Improvement bonds may be sold for cash at not less than ninety-eight percent of par and accrued interest, and the proceeds, less accrued interest, must be credited to the construction account of the fund and must be used exclusively to pay those contracts and construction costs. Any balance remaining in any construction account after completion of any project must be transferred to the sinking fund account of the assessment fund. The treasurer of the district shall pay special assessment bonds as they mature and are presented for payment out of the fund on which they are drawn and shall cancel the bonds when paid.

**61-24.8-39. Refunding special assessment bonds - Purposes for which such bonds may be issued - Payment of bonds.**

Any district having outstanding special assessment bonds, payable in whole or in part out of collections from special assessments, which are past-due or which are redeemable, either at the option of the district or with the consent of the bondholders, may issue refunding special assessment bonds if there is not sufficient money in the

project fund against which such bonds are drawn to pay the same. The issuance of refunding bonds must be authorized by resolution of the board. The resolution must describe the bonds to be refunded and their amount and maturity. Refunding bonds may be issued to extend the maturities of bonds payable in whole or in part by special assessments or to reduce the interest on the bonds. Refunding bonds must bear such date, be in such date, be in such denominations, and mature serially within such time, not exceeding thirty years from date of issuance, as the board determines. The treasurer of the district shall pay special assessment bonds as they mature and are presented for payment out of the fund against which they are drawn and shall cancel the bonds when paid.

**61-24.8-40. Foreclosure of tax lien on property when general and special assessment taxes are delinquent.**

Special assessments imposed under this chapter become due and delinquent and are subject to penalties for nonpayment at the same date and rates as first installments of real estate taxes at the same time and in the same manner as provided in title 57. If there is no delinquent general property tax against a tract or parcel of land and it is foreclosed for special assessments alone, the notice of foreclosure of tax lien must state that the foreclosure is for special assessments and a tax deed in such case must be issued in the usual course of procedure.

**61-24.8-41. Contracts for construction or maintenance of project.**

If the cost of construction or maintenance of a project does not exceed the amount provided for construction of a public improvement under section 48-01.2-02, the work may be done on a day work basis or a contract may be let without being advertised. If the costs of the construction or maintenance exceed the amount provided for construction of a public improvement under section 48-01.2-02, the board must let a contract in accordance with chapter 48-01.2.

**SECTION 3. REPORT TO STATE WATER COMMISSION.** The Garrison Diversion Conservancy District shall report periodically to the state water commission on the development and status of irrigation projects constructed under this Act.

**SECTION 4. EXPIRATION DATE.** This Act is effective through July 31, 2013, and after that date is ineffective except for projects for which all steps up to and including approval as described in section 61-24.8-14 are completed before August 1, 2013.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 497

### HOUSE BILL NO. 1335

(Representatives Hofstad, D. Johnson, Holman)  
(Senators Oehlke, Heckaman)

AN ACT to create and enact a new section to chapter 61-28 of the North Dakota Century Code, relating to exemptions from enforcement actions for water transfers used to control flooding; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 61-28 of the North Dakota Century Code is created and enacted as follows:

##### Water transfers used to control flooding exempt.

1. An action may not be brought under either chapter 32-40 or 61-28 against an owner or operator of a water transfer used to control flooding for violation of the state's water pollution control laws if the water transfer:
  - a. Does not require a national pollutant discharge elimination system permit; and
  - b. Complies with the conditions in the state's water quality standards established to protect aquatic life.
2. For purposes of this section, "water transfer" means an activity that conveys or connects waters of the state without subjecting the transferred water to intervening industrial, municipal, or commercial use.
3. The exemption in subsection 1 does not apply to pollutants introduced by the water transfer activity itself to the water being transferred.
4. The owner or operator of a water transfer falling within this exemption must notify the department before beginning operations.

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

Approved April 19, 2011  
Filed April 19, 2011

## CHAPTER 498

### HOUSE BILL NO. 1459

(Representatives Belter, Headland, Schmidt)  
(Senators Luick, Wanzek, Dotzenrod)

AN ACT to create and enact a new subsection to section 61-21-02 and a new section to chapter 61-32 of the North Dakota Century Code, relating to subsurface drainage of water; to provide a penalty; and to declare an emergency.

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

<sup>182</sup> **SECTION 1.** A new subsection to section 61-21-02 of the North Dakota Century Code is created and enacted as follows:

The installation of artificial subsurface drainage systems.

<sup>183</sup> **SECTION 2.** A new section to chapter 61-32 of the North Dakota Century Code is created and enacted as follows:

#### **Permit to drain subsurface waters - Permit form - Penalty.**

Installation of an artificial subsurface drainage system comprising eighty acres [32.37 hectares] of land area or more requires a permit. The state engineer shall develop an application form for a permit for subsurface drainage of water. A person seeking to construct an artificial subsurface drainage system must submit an application to the water resource district within which is found a majority of the land area for consideration and approval. Water resource districts may attach any necessary conditions to an approved permit, but may not deny an application unless the water resource district determines the application is of statewide significance or the proposed drainage will flood or adversely affect downstream landowners within one mile [1.61 kilometers] of the proposed subsurface drainage. Water resource districts must forward copies of all approved permits to the state engineer. Water resource districts shall determine if the application proposes drainage of statewide significance. If so, the application must be referred to the state engineer for consideration and approval, and the state engineer shall make a determination within thirty days. The permit applicant shall provide a thirty-day notice to downstream property owners within one mile [1.61 kilometers] of the proposed subsurface drainage. If an investigation by a water resource district or a downstream landowner within one mile [1.61 kilometers] shows that the proposed drainage will flood or adversely affect downstream landowners within one mile [1.61 kilometers], the water resource district may require flowage easements before issuing a permit. If an artificial subsurface drainage system drains into an assessment drain, natural watercourse, or pond, slough, or lake, a flowage easement is not required. Flowage easements must be filed for record in the office of the recorder of the county or counties in which the lands are situated. A person that installs an artificial subsurface

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<sup>182</sup> Section 61-21-02 was also amended by section 1 of Senate Bill No. 2280, chapter 499.

<sup>183</sup> Section 61-32-03.1 was also created by section 2 of Senate Bill No. 2280, chapter 499.

drainage system without first securing a permit to do so, as provided in this section, is liable for all damage sustained by a person caused by the draining, and is guilty of an infraction.

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

Approved April 20, 2011

Filed April 20, 2011

## CHAPTER 499

### SENATE BILL NO. 2280

(Senators Luick, Miller, Uglem, Wanzek)  
(Representatives Schmidt, Wall)

AN ACT to create and enact a new subsection to section 61-21-02 and a new section to chapter 61-32 of the North Dakota Century Code, relating to subsurface drainage of water; to provide a penalty; and to declare an emergency.

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

<sup>184</sup> **SECTION 1.** A new subsection to section 61-21-02 of the North Dakota Century Code is created and enacted as follows:

The installation of artificial subsurface drainage systems.

<sup>185</sup> **SECTION 2.** A new section to chapter 61-32 of the North Dakota Century Code is created and enacted as follows:

#### **Permit to drain subsurface waters required - Permit form - Penalty.**

Installation of an artificial subsurface drainage system comprising eighty acres [32.37 hectares] of land area or more requires a permit. The state engineer shall develop an application form for a permit for subsurface drainage of water. A person seeking to construct an artificial subsurface drainage system must submit an application to the water resource district within which is found a majority of the land area for consideration and approval. Water resource districts may attach any necessary conditions to an approved permit, but may not deny an application unless the water resource district determines the application is of statewide significance or the proposed drainage will flood or adversely affect downstream landowners within one mile [1.61 kilometers] of the proposed subsurface drainage. Water resource districts must forward copies of all approved permits to the state engineer. Water resource districts shall determine if the application proposes drainage of statewide significance. If so, the application must be referred to the state engineer for consideration and approval, and the state engineer shall make a determination within thirty days. The permit applicant shall provide a thirty-day notice to downstream property owners within one mile [1.61 kilometers] of the proposed subsurface drainage. If an investigation by a water resource district or a downstream landowner within one mile [1.61 kilometers] shows that the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers], the water resource district may require flowage easements before issuing a permit. If an artificial subsurface drainage system drains into an assessment drain, natural watercourse, or pond, slough, or lake, a flowage easement is not required. Flowage easements must be filed for record in the office of the recorder of the county or counties in which the lands are situated. A person that installs an artificial subsurface

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<sup>184</sup> Section 61-21-02 was also amended by section 1 of House Bill No. 1459, chapter 498.

<sup>185</sup> Section 61-32-03.1 was also created by section 2 of House Bill No. 1459, chapter 498.

drainage system without first securing a permit to do so, as provided in this section, is liable for all damage sustained by a person caused by the draining, and is guilty of an infraction.

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

Approved April 19, 2011

Filed April 20, 2011



## CHAPTER 500

### HOUSE BILL NO. 1206

(Representatives Skarphol, Keiser, Kreun)  
(Senators Fischer, Lyson, O'Connell)

AN ACT to create and enact chapter 61-40 of the North Dakota Century Code, relating to a western area water supply authority; to provide appropriations; to provide for loans and loan repayment; and to declare an emergency.

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

**SECTION 1.** Chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

#### **61-40-01. Legislative declarations - Authority of western area water supply authority.**

The legislative assembly declares that many areas and localities in western North Dakota do not enjoy adequate quantities of high-quality drinking water; that other areas and localities in western North Dakota do not have sufficient quantities of water to ensure a dependable, long-term domestic or industrial water supply; that greater economic security and the protection of health and property benefits the land, natural resources, and water resources of this state; and that the promotion of the prosperity and general welfare of all of the people of this state depend on the effective development and utilization of the land and water resources of this state and necessitates and requires the exercise of the sovereign powers of this state and concern a public purpose. To accomplish this public purpose, it is declared necessary that a water authority to treat, store, and distribute water to western North Dakota be established to provide for the supply and distribution of water to the people of western North Dakota for purposes, including domestic, rural water, municipal, livestock, industrial, oil and gas development, and other uses, and provide for the future economic welfare and prosperity of the people of this state, and particularly the people of western North Dakota, by the creation and development of a western area water supply project for beneficial and public uses. The western area water supply authority may acquire, construct, improve, develop, and own water supply infrastructure and may enter water supply contracts with member cities, water districts, and private users, such as oil and gas producers, for the sale of water for use within or outside the authority boundaries or the state. The western area water supply authority shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers.

#### **61-40-02. Western area water supply authority.**

The western area water supply authority consists of participating political subdivisions located within McKenzie, Williams, Burke, Divide, and Mountrail Counties which enter a water supply contract with the authority. Other cities and water systems, within or outside the authority counties' boundaries, including cities or water systems in Montana, may contract with the authority for a bulk water supply. The authority is a political subdivision of the state, a governmental agency, body politic and corporate, with the authority to exercise the powers specified in this chapter, or which may be reasonably implied. Participating member entities may be required to

pay dues or water sale income to the authority, as determined by the bylaws and future resolutions of the authority. Participating member entities may not withdraw from the authority or fail or refuse to pay any water sale income to the authority if the twenty-five million dollar zero interest loan from the state water commission has not been repaid.

**61-40-03. Western area water supply authority - Board of directors.**

1. The initial board of directors of the western area water supply authority consists of two representatives from each of the following entities: Williams rural water district, McKenzie County water resource district, the city of Williston, BDW water system association, and R&T water supply association. The governing body of each member entity shall select two representatives to the authority board who are water users of the member entity. If a vacancy arises for a member entity, the governing body of the member entity shall select a new representative to act on its behalf on the authority board. In addition, the state engineer or designee is a voting member on the authority's board of directors. Directors have a term of one year and may be reappointed.
2. Additional political subdivisions or water systems may be given membership on the board upon two-thirds majority vote of the existing board. To be eligible for membership on the board, the member entity must first contract with the authority for financial participation in the project.
3. A member entity may designate an alternate representative to attend meetings and to act on the member's behalf. The board may designate associate members who are nonvoting members of the board. Notwithstanding this section, except for the state engineer or designee, initial board members must be removed if they have not entered a contract with the authority, before August 1, 2013, for financial participation in the project.

**61-40-04. Board of directors - Officers - Meetings.**

1. The board of directors shall adopt such rules and bylaws for the conduct of the business affairs of the authority as it determines necessary, including the time and place of regular meetings of the board, financial participation structure for membership in the authority, and membership appointment and changes. Bylaws need to be approved by member entity boards.
2. The board shall elect from its members a chairman and a vice chairman. The board shall elect a secretary and a treasurer, which offices may be held by the same individual, and either or both offices may be held by an individual who is not a member of the board. Special meetings of the board may be called by the secretary on order of the chairman or upon written request of a majority of the qualified members of the board. Notice of a special meeting must be mailed to each member of the board at least six days before the meeting, provided that a special meeting may be held at any time when all members of the board are present or consent in writing.
3. Board members are entitled to receive as compensation an amount determined by the board not to exceed the amount per day provided members of the legislative management under section 54-35-10 and must be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09.

4. The initial board bylaws must direct board voting protocol. A weighted voting structure for board members is acceptable if the voting is based upon the volume of water purchased, the financial contributions of the stakeholder entities, or any other formula agreed by a majority of the board.
5. Before the bylaws become effective, the bylaws must be reviewed and approved by the attorney general.

**61-40-05. Authority of the western area water supply authority.**

In addition to authority declared under section 61-40-01, the board of directors of the western area water supply authority may:

1. Sue and be sued in the name of the authority.
2. Exercise the power of eminent domain in the manner provided by title 32 or as described in this chapter for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of an entire part of any pipeline, reservoir, connection, valve, pumping installation, or other facility for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority. However, if the interest sought to be acquired is a right of way for any project authorized in this chapter, the authority, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county in which the right of way is located, may take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.
3. Accept funds, property, services, pledges of security, or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the authority. The authority may cooperate and contract with the state or federal government, or any department or agency of state or federal government, or any city, water district, or water system within the authority, in furnishing assurances and meeting local cooperation requirements of any project involving treatment, control, conservation, distribution, and use of water.
4. Cooperate and contract with the agencies or political subdivisions of this state or other states, in research and investigation or other activities promoting the establishment, construction, development, or operation of the authority.
5. Appoint and fix the compensation and reimbursement of expenses of employees as the board determines necessary to conduct the business and affairs of the authority and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for the authority in its proceedings.

6. Operate and manage the authority to distribute water to authority members and others within or outside the territorial boundaries of the authority and this state.
7. Hold, own, sell, or exchange any and all property purchased or acquired by the authority. All money received from any sale or exchange of property must be deposited to the credit of the authority and may be used to pay expenses of the authority.
8. Enter contracts to obtain a supply of bulk water through the purchase of infrastructure, bulk water sale or lease, which contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water supply or infrastructure.
9. Acquire, construct, improve, and own water supply infrastructure, office and maintenance space in phases, in any location, and at any time.
10. Enter contracts to provide for a bulk sale, lease, or other supply of water for beneficial use to persons within or outside the authority. The contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water system projects, as well as the authority's costs of operating and maintaining one or more projects, whether the acquisition, construction, or reconstruction of any water supply project actually is completed and whether water actually is delivered pursuant to the contracts. The contracts the cities, water districts, and other entities that are members of the western area water supply authority are authorized to execute are without limitation on the term of years.
11. Borrow money as provided in this chapter.
12. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its obligations, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any contract or instrument.
13. Accept from any authorized state or federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and enter agreements with the agency respecting the loans or grants.
14. Contract debts and borrow money, pledge property of the authority for repayment of indebtedness, and provide for payment of debts and expenses of the authority.
15. Operate and manage the authority to distribute water to any out-of-state cities or water systems that contract with the authority.
16. Accept, apply for, and hold water allocation permits.
17. Adopt rules concerning the planning, management, operation, maintenance, sale, and ratesetting regarding water sold by the authority. The authority may adopt a rate structure with elevated rates set for project industrial water supplies in recognition that a large component of the project expense is being incurred to meet the demands of industrial users.

18. Develop water supply systems; store and transport water; and provide, contract for, and furnish water service for domestic, municipal, and rural water purposes; milling, manufacturing, mining, industrial, metallurgical, and any and all other beneficial uses; and fix the terms and rates therefore. The authority may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines, tunnels, and any and all treatment plants, works, facilities, improvements, and property necessary the same without any required public vote before taking action.
19. Contract to purchase or improve water supply infrastructure or to obtain bulk water supplies without requiring any vote of the public on the projects or contracts. In relation to the initial construction of the system and for the purposes of entering a contract with the authority, municipalities are exempt from the public voting requirements or water contract duration limitations otherwise imposed by section 40-33-16.
20. Accept assignment by member entities of contracts that obligate member entities to provide a water supply, contracts that relate to construction of water system infrastructure, or other member entity contracts that relate to authorities transferred to the authority under this chapter.

#### **61-40-06. Oversight of authority projects.**

The authority shall comply with the policy of the state water commission as the policy relates to bidding, planning, and construction of the project. The policy must include provisions for insurance, including general liability insurance, in adequate amounts. The authority shall report to and consult with the state water commission regarding the operation and financial status of the project, as requested by the state water commission. In relation to initial construction of the system and debt repayment, the authority shall present the overall plan and contract plans and specifications for the project to the state water commission for approval. The attorney general shall assist the authority at the request of the state water commission. If the twenty-five million dollar zero interest loan from the state water commission has not been repaid, without the written consent of the state water commission the authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of property used in a water system of the authority if the property is used to provide revenue.

#### **61-40-07. Easement granted for pipelines and appurtenant facilities on any public lands.**

In connection with the construction and development of the project, there is granted over all the lands belonging to the state, including lands owned or acquired for highway right-of-way purposes, a right of way for pipelines, connections, valves, and all other appurtenant facilities constructed as part of the project. However, the director of the department of transportation and the state engineer must approve the plans of the authority with respect to the use of right of way of roads before the grant becomes effective.

#### **61-40-08. Proceedings to judicially confirm contracts and other acts.**

The authority, before making any contract or taking any special action, may commence a special proceeding in district court by which the proceeding leading up to the making of such contract or leading up to any other special action must be examined, approved, and confirmed. The judicial proceedings must comply substantially with the procedure required in the case of judicial confirmation of proceedings, acts, and contracts of an irrigation district.

### **61-40-09. Default.**

If the authority is in default in the payment of the principal of or interest on any of the obligations of the authority under this chapter and if the budget section determines that the authority is unable to reimburse the state in the time period required by the budget section, the budget section may give written notice to the governing board of the authority that the state has taken possession and ownership of the water system of the authority and the liabilities of the authority. In addition, the state assumes the powers of the authority. If the authority is in default in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of North Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due. Upon written notice, the members of the governing board of the authority are immediately removed, and the state water commission is the governing board from the date of notice. If the state water commission determines that governance, possession, and ownership of the water system is not necessary for the authority to be able to reimburse the state in the necessary time period, the state water commission may develop a plan to return governance, possession, and ownership to the authority, subject to approval of the plan by the budget section.

**SECTION 2. LOANS FROM BANK OF NORTH DAKOTA AND STATE WATER COMMISSION.** The Bank of North Dakota shall provide a loan of \$50,000,000 to the western area water supply authority for construction of the project. The terms and conditions of the loan must be negotiated by the western area water supply authority and the Bank of North Dakota. However, the term of the loan is a maximum of seven years after June 30, 2014. The state water commission shall make available from funding appropriated to the commission for the 2011-13 biennium \$25,000,000 as a zero interest loan to the western area water supply authority, and the Bank of North Dakota shall manage this loan. The maximum term of this loan is five years from the completion of the \$10,000,000 loan from the resources trust fund.

**SECTION 3. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$25,000,000 or so much of the sum as may be necessary, to the Bank of North Dakota for the purpose of providing a loan to the western area water supply authority for a maximum term of eight years from the completion of the \$50,000,000 loan from the Bank of North Dakota and at five percent interest per year, for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 4. APPROPRIATION.** There is appropriated out of any moneys in the resources trust fund in the state treasury, not otherwise appropriated, the sum of \$10,000,000, or so much of the sum as may be necessary, to the Bank of North Dakota for the purpose of providing a loan to the western area water supply authority for a maximum term of two years from the completion of the \$25,000,000 loan from the general fund and at five percent interest per year, for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 5. LOAN FUNDING AND REPAYMENT PRIORITY.** Funding from sections 2, 3, and 4 of this Act must be structured so that funding is provided, as needed, first from the \$25,000,000 zero interest loan from the state water commission, second from the \$50,000,000 loan from the Bank of North Dakota, third from the \$25,000,000 loan from the general fund, and last from the \$10,000,000 loan from the resources trust fund. Repayment of loans must be structured so that repayment is first of the \$50,000,000 loan from the Bank of North Dakota, second of the \$25,000,000 loan from the general fund for deposit of the principal in the general fund and interest in the resources trust fund, third from the \$10,000,000 loan from the

resources trust fund for deposit in the resources trust fund, and last of the \$25,000,000 zero interest loan from the state water commission for deposit in the resources trust fund. The western area water supply authority shall repay the loans for the project from revenues from the project, and the authority may prepay loans within the priority without penalty. Upon repayment of the state water commission zero interest loan, the authority shall provide five percent of the net profits to the state water commission for deposit by the state treasurer in the resources trust fund until June 30, 2040.

**SECTION 6. SECOND PHASE ANTICIPATED FUNDING.** At the request of the western area water supply authority, the state water commission shall consider a loan of \$40,000,000 from the resources trust fund for inclusion within the state water commission's budget. The state water commission shall consult and work cooperatively with the water-related topics overview committee in setting the priority of the loan within the budget.

**SECTION 7. EMERGENCY.** This Act is declared to be an emergency measure.

Approved May 3, 2011

Filed May 5, 2011

# WEAPONS

## CHAPTER 501

### HOUSE BILL NO. 1209

(Representative DeKrey)

AN ACT to create and enact a new section to chapter 62.1-02 of the North Dakota Century Code, relating to the restoration of the right to possess a firearm; and to amend and reenact subsection 3 of section 62.1-01-01 of the North Dakota Century Code, relating to a definition of firearm or weapon.

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

**SECTION 1. AMENDMENT.** Subsection 3 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, 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.
  - c. A muzzleloading rifle or muzzleloading shotgun that is designed to use black powder, or a black powder substitute, and cannot use fixed ammunition.

**SECTION 2.** A new section to chapter 62.1-02 of the North Dakota Century Code is created and enacted as follows:

#### **Restoration of right to possess firearm.**

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 in the district where the individual resides for restoration of the individual's firearm rights.



2. The district court may restore the right of an individual to possess a firearm if the court determines, by clear and convincing evidence, that all of the following circumstances exist:
  - a. The individual has paid all fines imposed for the violation resulting in the prohibition;
  - b. The individual has served all terms of imprisonment imposed for the violation resulting in the prohibition;
  - c. The individual has successfully completed all conditions of probation or parole imposed for the violation resulting in the prohibition; and
  - d. The individual's record and reputation are such that the individual is not likely to act in a manner dangerous to the safety of others.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 502

### HOUSE BILL NO. 1269

(Representatives Karls, Devlin, Klemin, Porter, Weisz)  
(Senator Lyson)

AN ACT to create and enact a new section to chapter 62.1-02 of the North Dakota Century Code, relating to mental disability and firearm possession; to amend and reenact sections 25-03.1-43 and 62.1-02-01 and subsection 3 of section 62.1-04-03 of the North Dakota Century Code, relating to possession of firearms in this state and confidential records; to provide an appropriation; to provide a contingent effective date; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 25-03.1-43 of the North Dakota Century Code is amended and reenacted as follows:

##### **25-03.1-43. Confidential records.**

All information and records obtained in the course of an investigation, an evaluation, an examination, or treatment under this chapter and the presence or past presence of a patient in a treatment facility are confidential, but the information and records may be disclosed to and be used by a court as required to carry out the purposes of this chapter, and as authorized under title 45, Code of Federal Regulations, part 164. Courts also may release nonclinical identifying information of persons subject to proceedings under this chapter for the purposes of section 3 of this Act. Any information disclosed to a court remains confidential information, except as provided in section 3 of this Act.

**SECTION 2. AMENDMENT.** Section 62.1-02-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **62.1-02-01. Persons who are not to possess firearms - Penalty.**

1. a. A person who has been convicted anywhere of a felony offense involving violence or intimidation in violation of chapters 12.1-16 through 12.1-25 or an equivalent felony offense of another state or the federal government is prohibited from owning a firearm or having one in possession or under control from the date of conviction and continuing for a period of ten years after the date of conviction or the date of release from incarceration, parole, or probation, whichever is latest.
- b. A person who has been convicted anywhere of a felony offense of this or another state or the federal government not provided for in subdivision a or who has been convicted of a class A misdemeanor offense involving violence or intimidation in violation of chapters 12.1-16 through 12.1-25 or an equivalent offense of another state or the federal government and the offense was committed while using or possessing a firearm, a dangerous weapon, or, as defined in subsections 7 and 8 of section 12.1-01-04, a destructive device or an explosive, is prohibited from owning a firearm or having one in possession or under control from the date of conviction and

continuing for a period of five years after the date of conviction or the date of release from incarceration, parole, or probation, whichever is latest.

- c. A person who is or has ever been diagnosed and confined or committed to a hospital or other institution in this state or elsewhere by a court of competent jurisdiction, other than a person who has had the petition that provided the basis for the diagnosis, confinement, or commitment dismissed under section 25-03.1-17, 25-03.1-18, or 25-03.1-19, or equivalent statutes of another jurisdiction, as a ~~mentally ill~~ person requiring treatment as defined in section 25-03.1-02, or as a mentally deficient person as defined in section 25-01-01, is prohibited from purchasing a firearm or having one in possession or under control. This limitation does not apply to a person who has not suffered from the disability for the previous three years or who has successfully petitioned for relief under section 3 of this Act.
- d. A person under the age of eighteen years may not possess a handgun except that such a person, while under the direct supervision of an adult, may possess a handgun for the purposes of firearm safety training, target shooting, or hunting.

A person who violates subdivision a or b is guilty of a class C felony, and a person who violates subdivision c or d is guilty of a class A misdemeanor.

2. For the purposes of this section, "conviction" means a determination that the person committed one of the above-mentioned crimes upon a verdict of guilt, a plea of guilty, or a plea of nolo contendere even though:
  - a. The court suspended execution of sentence in accordance with subsection 3 of section 12.1-32-02;
  - b. The court deferred imposition of sentence in accordance with subsection 4 of section 12.1-32-02;
  - c. The court placed the person on probation;
  - d. The person's conviction has been reduced in accordance with subsection 9 of section 12.1-32-02 or section 12.1-32-07.1;
  - e. Sentence dispositions, sentence reductions, or offense determinations equivalent to this section were imposed or granted by a court, board, agency, or law of another state or the federal government; or
  - f. The person committed an offense equivalent to an offense described in subdivision a or b of subsection 1 when that person was subject to juvenile adjudication or proceedings and a determination of a court under chapter 27-20 or of a court of another state or the federal government was made that the person committed the delinquent act or offense.

**SECTION 3.** A new section to chapter 62.1-02 of the North Dakota Century Code is created and enacted as follows:

**Mental disability and the possession of firearms.**

1. A court shall make a finding as to whether the provisions of 18 U.S.C. 922(d)(4) and (g)(4) apply to the subject of a following proceeding in which the court:
  - a. Finds that a person, as a result of mental disease or defect, may not be held criminally responsible in any case pursuant to chapter 12.1-04 or 12.1-04.1;
  - b. Finds that a person is a "mentally deficient person", as defined in subsection 3 of section 25-01-01;
  - c. Orders involuntary hospitalization or commitment to a treatment facility or involuntary treatment pursuant to chapter 25-03.1;
  - d. Orders involuntary commitment or involuntary treatment under chapter 25-03.3;
  - e. Appoints a guardian ad litem under section 28-03-04;
  - f. Appoints a guardian under chapter 30.1-28; or
  - g. Appoints a conservator under chapter 30.1-29.
2. If the court finds that the provisions apply, the clerk of the court shall forward the individual's name and nonclinical identifying information to the bureau of criminal investigation, which shall forward the information to the federal bureau of investigation, or its successor agency, for inclusion in the national instant criminal background check system database. The court also shall notify the individual of the prohibitions of 18 U.S.C. 922(d)(4) and (g)(4), and, if relevant, of subdivision c of subsection 1 of section 62.1-02-01.
3. If a court of this state has found an individual under subsection 1 to be subject to the provisions of 18 U.S.C. 922(d)(4) and (g)(4), that individual may petition the court that issued the finding or the district court of the county where the individual resides to remove that individual's firearms-related disabilities, as provided in Public Law 110-180, section 105(a). A copy of the petition for relief must be served on the director of the treatment facility that treated the individual pursuant to court order and the prosecuting attorney of the county in which the original finding, order, or appointment occurred. The director of the treatment facility that treated the individual pursuant to court order and the prosecuting attorney may appear, support, object to, and present evidence relevant to the relief sought by the petitioner. The court shall receive and consider evidence in a closed proceeding, including evidence offered by the petitioner, concerning:
  - a. The circumstances of the original order, appointment, or finding;
  - b. The petitioner's mental health and criminal history records, if any;
  - c. The petitioner's reputation; and
  - d. Changes in the petitioner's condition or circumstances relevant to the relief sought.

4. The court shall grant the petition for relief if the court finds by a preponderance of the evidence that the petitioner likely will not act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest. A record must be kept of the proceedings. The record is confidential and may be disclosed only to a court in the event of an appeal. An individual may file a petition for relief under this section no more than once every two years.
5. When a magistrate or court issues an order granting a petition for relief under subsection 3, the clerk of the court immediately shall forward a copy of the order to the bureau of criminal investigation in the format and medium specified by the bureau after consultation with the state court administrator. The bureau immediately shall forward a copy to the federal bureau of investigation, or its successor agency, for updating of the national instant criminal background check system database.

<sup>186</sup> **SECTION 4. AMENDMENT.** Subsection 3 of section 62.1-04-03 of the North Dakota Century Code is amended and reenacted as follows:

3. The sheriff is required to process the application within thirty days after the completion of the testing portion unless the application is for renewal of a license and in such case the application must be processed within thirty days after its receipt by the sheriff, the chief of police is required to process the application within ten working days of receipt by the agency, and the bureau of criminal investigation is required to process the application and make a determination within ~~thirty~~<sup>thirty-five</sup> days of receipt from the forwarding agency.

**SECTION 5. APPROPRIATION.** There is appropriated the sum of \$585,859, or so much of the sum as may become available from a grant under the Act of Congress entitled NICS Improvement Act of 2007 [Pub. L. 110-180; 121 Stat. 2559] or other funds, to the attorney general for the purpose of implementing software and administering the system, for the biennium beginning July 1, 2011, and ending June 30, 2013. This appropriation includes funding for one and one-half full-time equivalent positions to administer the provisions of the Act, which must be terminated when grant funding is no longer available.

**SECTION 6. CONTINGENT EFFECTIVE DATE.** Subsections 2 and 5 of section 3 of this Act become effective when the attorney general certifies to the secretary of state, the office of management and budget, and the legislative council that the state has received the grant under section 5 of this Act and has implemented the software and system to carry out the provisions of subsections 2 and 5 of section 3 of this Act.

**SECTION 7. EMERGENCY.** Section 4 of this Act is declared to be an emergency measure.

Approved April 27, 2011  
Filed April 27, 2011

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<sup>186</sup> Section 62.1-04-03 was also amended by section 1 of House Bill No. 1461, chapter 504.

## CHAPTER 503

### HOUSE BILL NO. 1438

(Representatives S. Kelsh, DeKrey, J. Nelson, Gruchalla, Onstad)  
(Senator Lyson)

AN ACT to create and enact a new section to chapter 62.1-02 of the North Dakota Century Code, relating to an employer's prohibition on firearm possession.

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

<sup>187</sup> **SECTION 1.** A new section to chapter 62.1-02 of the North Dakota Century Code is created and enacted as follows:

#### **Possession of secured firearm - Prohibition by employer prohibited.**

1. A public or private employer may not:
  - a. Prohibit any customer, employee, or invitee from possessing any legally owned firearm, if the firearm is lawfully possessed and locked inside or locked to a private motor vehicle in a parking lot and if the customer, employee, or invitee is lawfully in the area.
  - b. Make a verbal or written inquiry regarding the presence of a firearm inside or locked to a private motor vehicle in a parking lot or make an actual search of a private motor vehicle in a parking lot to ascertain the presence of a firearm within the vehicle. In addition, a public or private employer may not take any action against a customer, employee, or invitee based upon verbal or written statements of any party concerning possession of a firearm stored inside a private motor vehicle in a parking lot for lawful purposes. A search of a private motor vehicle in the parking lot of a public or private employer to ascertain the presence of a firearm within the vehicle may only be conducted by an on-duty law enforcement officer.
  - c. Condition employment upon the fact that an employee or prospective employee holds or does not hold a concealed weapons license or any agreement by an employee or a prospective employee that prohibits an employee from keeping a legal firearm locked inside or locked to a private motor vehicle in a parking lot, if the firearm is kept for lawful purposes.
  - d. Prohibit or attempt to prevent any customer, employee, or invitee from entering the parking lot or the employer's place of business because the customer's, employee's, or invitee's private motor vehicle contains a legal firearm being carried for lawful purposes, that is out of sight within the customer's, employee's, or invitee's private motor vehicle.
  - e. Terminate the employment of or otherwise discriminate against an employee, or expel a customer or invitee for exercising the constitutional right to keep and bear arms or for exercising the right of self-defense as

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<sup>187</sup> Section 62.1-02-13 was amended by section 22 of Senate Bill No. 2015, chapter 41.

- long as a firearm is never exhibited on company property for any reason other than lawful defensive purposes.
2. A public or private employer has no duty of care related to the actions prohibited under this section.
  3. A public or private employer is not liable in a criminal or civil action based on actions or inactions taken in compliance with this section. The immunity provided in this subsection does not apply to civil actions based on actions or inactions of public or private employers that are unrelated to compliance with this section.
  4. This section does not expand any existing duty, or create any additional duty, on the part of a public or private employer, property owner, or property owner's agent.
  5. A person aggrieved under this section may bring a civil action for violation of rights protected under this section. In any successful action brought by a customer, employee, or invitee aggrieved under this section, the court shall award all reasonable personal costs and losses suffered by the aggrieved person as a result of the violation of rights under this section. In any action brought under this section, the court shall award all court costs and attorney's fees to the prevailing party.
  6. The prohibitions in subsection 1 do not apply to:
    - a. Any public or nonpublic elementary school, middle school, high school, college, or university property.
    - b. Any correctional facility or institution.
    - c. Property owned or leased by a public or private employer or the landlord of a public or private employer upon which are conducted substantial activities involving national defense, aerospace, or homeland security.
    - d. Property owned or leased by a public or private employer or the landlord of a public or private employer upon which the primary business conducted is the manufacture, use, storage, or transportation of combustible or explosive materials regulated under state or federal law, or property owned or leased by an employer who has obtained a permit required under 18 U.S.C. 842 to engage in the business of importing, manufacturing, or dealing in explosive materials on the property.
    - e. A motor vehicle owned, leased, or rented by a public or private employer or the landlord of a public or private employer.
    - f. Any other property owned or leased by a public or private employer or the landlord of a public or private employer upon which possession of a firearm or other legal product by a customer, employee, or invitee is prohibited under any federal law, contract with a federal governmental entity, or other law of this state.

## CHAPTER 504

### HOUSE BILL NO. 1461

(Representatives Porter, DeKrey, Delzer, Devlin, Grande)  
(Senator Lyson)

AN ACT to amend and reenact section 62.1-04-03 of the North Dakota Century Code, relating to concealed weapons permits; and to declare an emergency.

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

<sup>188</sup> **SECTION 1. AMENDMENT.** Section 62.1-04-03 of the North Dakota Century Code is amended and reenacted as follows:

#### **62.1-04-03. (Effective through June 30, 2011) License to carry a firearm or dangerous weapon concealed.**

1. The director of the bureau of criminal investigation shall issue a license to carry a firearm or dangerous weapon concealed upon review of an application submitted to the director by a resident or nonresident citizen of the United States if the following criteria are met:
  - a. The applicant is at least twenty-one years of age for a class 1 license or at least eighteen years of age for a class 2 license.
  - b. The applicant has a valid reason for carrying the firearm or dangerous weapon concealed, including self-protection, protection of others, or work-related needs.
  - c. The applicant is not a person specified in section 62.1-02-01.
  - d. The applicant has the written approval for the issuance of a license from the sheriff of the applicant's county of residence, and, if the city has one, the chief of police or a designee of the city in which the applicant resides. The approval by the sheriff may not be given until the applicant has successfully completed a background investigation in that county and has successfully completed the testing procedure conducted by a certified firearm or dangerous weapon instructor. The person conducting the testing may assess a charge of up to fifty dollars for conducting this testing. The attorney general may certify a firearm or dangerous weapon instructor based upon criteria and guidelines prescribed by the director of the bureau of criminal investigation.
  - e. The applicant satisfactorily completes the bureau of criminal investigation application form and has successfully passed a background investigation or criminal records check conducted by that agency. To pass a background investigation, an applicant shall provide all documentation relating to any court-ordered treatment or commitment for mental health or alcohol or substance abuse or incidents of domestic violence. The applicant shall

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<sup>188</sup> Section 62.1-04-03 was also amended by section 4 of House Bill No. 1269, chapter 502.



- 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.
- f. The applicant is not prohibited under federal law from owning, possessing, or having a firearm under that person's control.
2. The attorney general shall offer class 1 and class 2 licenses to carry a firearm or dangerous weapon concealed pursuant to the following requirements:
    - a. An applicant for a class 1 license shall successfully participate in a classroom instruction that sets forth weapon safety rules and the deadly force law of North Dakota, complete an open book test based upon a manual, demonstrate familiarity with a firearm or dangerous weapon, and complete an actual shooting or certified proficiency exercise. Evidence of familiarity with a firearm or dangerous weapon to be concealed may be satisfied by one of the following:
      - (1) Certification of familiarity with a firearm or dangerous weapon by an individual who has been certified by the attorney general, which may include a law enforcement officer, military or civilian firearms instructor, hunter safety instructor, or dangerous weapon instructor;
      - (2) Evidence of equivalent experience with a firearm or dangerous weapon through participation in an organized shooting competition, law enforcement, military service, or dangerous weapon course of training;
      - (3) Possession of a license from another state to carry a firearm or dangerous weapon, concealed or otherwise, which is granted by that state upon completion of a course described in paragraphs 1 and 2; or
      - (4) Evidence that the applicant, during military service, was found to be qualified to operate a firearm or dangerous weapon.
    - b. An applicant for a class 2 license is required to successfully complete the open book test offered for the class 1 license.
    - c. Licenses issued before August 1, 2009, regardless of the age of the licenseholder, convert to a class 2 license upon renewal and no additional testing is required. No additional testing is required to renew a class 2 concealed weapons license. A class 1 license may be renewed upon successful completion of the class 1 requirements within one year before submission of the application for renewal. A license issued under this section before August 1, 2009, and a class 2 license may be upgraded to a class 1 license upon successful completion of the class 1 requirements and satisfaction of the age requirement.
  3. The sheriff is required to process the application within thirty days after the completion of the testing portion unless the application is for renewal of a license and in such case the application must be processed within thirty days after its receipt by the sheriff, the chief of police is required to process the application within ten working days of receipt by the agency, and the bureau of criminal investigation is required to process the application and make a determination within thirty days of receipt from the forwarding agency.

4. The license fee for a concealed weapons license is forty-five dollars, which must be credited to the attorney general's operating fund. The license fee must be paid before the license is issued by the director of the bureau of criminal investigation.
5. The director of the bureau of criminal investigation shall prescribe the form of the application and license, which must include the name, address, description, a photograph, and the signature of the individual. The application form must require sufficient information to properly conduct a background investigation and be accompanied by two sets of classifiable fingerprints. The two sets of classifiable fingerprints are not required for a renewal of a concealed weapons license. The license is valid for three years. The license must be prepared in triplicate, and the original must be delivered to the licensee, the duplicate must be sent by mail, within seven days after issuance, to the sheriff of the county in which the applicant resides, and the triplicate must be preserved for six years by the director. In those cases in which the licensee resides in a city, an additional copy of the license must be made and sent by mail, within seven days after issuance, to the chief of police of the city in which the applicant resides. The individual shall notify the director of the bureau of criminal investigation of any change of address or any other material fact which would affect the restrictions on or the need for the license.
6. The director of the bureau of criminal investigation may deny an application or revoke or cancel a license after it has been granted for any material misstatement by an applicant in an application for the license or any violation of this title.
7. The applicant may appeal a denial or revocation of this license to the district court of Burleigh County.
8. Information collected from an applicant under this section is confidential information. However, the information may be disclosed:
  - a. To a governmental agency or court for a law enforcement purpose, including the investigation, prosecution, or punishment of a violation of law.
  - b. To a court to aid in a decision concerning sentence, probation, or release pending trial or appeal.
  - c. Pursuant to a court order or a judicial, legislative, or administrative agency subpoena issued in this state.
9. The attorney general may adopt any rules necessary to carry out this title.

**(Effective after June 30, 2011) License to carry a firearm or dangerous weapon concealed.**

1. The director of the bureau of criminal investigation shall issue a license to carry a firearm or dangerous weapon concealed upon review of an application submitted to the director by a resident or nonresident citizen of the United States if the following criteria are met:
  - a. The applicant is at least twenty-one years of age for a class 1 license or at least eighteen years of age for a class 2 license.

- b. The applicant has a valid reason for carrying the firearm or dangerous weapon concealed, including self-protection, protection of others, or work-related needs.
- c. The applicant is not a person specified in section 62.1-02-01 and for a class 1 license the applicant:
- (1) Has not been convicted of a felony;
  - (2) Has not been convicted of a crime of violence;
  - (3) Has not been convicted of an offense involving the use of alcohol;
  - (4) Has not been convicted of an offense involving the unlawful use of narcotics or other controlled substances;
  - (5) Has not been convicted of an offense involving moral turpitude;
  - (6) Has not been convicted of an offense involving domestic violence;
  - (7) Has not been adjudicated by a state or federal court as mentally incompetent, unless the adjudication has been withdrawn or reversed; and
  - (8) Is qualified to purchase and possess a firearm under federal law.
- d. The applicant has the written approval for the issuance of a license from the sheriff of the applicant's county of residence, and, if the city has one, the chief of police or a designee of the city in which the applicant resides. The approval by the sheriff may not be given until the applicant has successfully completed a background investigation in that county and has successfully completed the testing procedure conducted by a certified firearm or dangerous weapon instructor. The person conducting the testing may assess a charge of up to fifty dollars for conducting this testing. The attorney general may certify a firearm or dangerous weapon instructor based upon criteria and guidelines prescribed by the director of the bureau of criminal investigation.
- e. The applicant satisfactorily completes the bureau of criminal investigation application form and has successfully passed a background investigation or criminal records check conducted by that agency. To pass a background investigation, an applicant shall provide all documentation relating to any court-ordered treatment or commitment for mental health or alcohol or substance abuse or incidents of domestic violence. 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 class 1 license if the bureau has reasonable cause to believe that the applicant or permitholder 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 permitholder has been or is a danger to self or others, the

bureau may inspect expunged records of arrests and convictions of adults and juvenile court records.

- f. The applicant is not prohibited under federal law from owning, possessing, or having a firearm under that person's control.
2. The attorney general shall offer class 1 and class 2 licenses to carry a firearm or dangerous weapon concealed pursuant to the following requirements:
    - a. An applicant for a class 1 license shall successfully participate in a classroom instruction that sets forth weapon safety rules and the deadly force law of North Dakota, complete an open book test based upon a manual, demonstrate familiarity with a firearm or dangerous weapon, and complete an actual shooting or certified proficiency exercise. Evidence of familiarity with a firearm or dangerous weapon to be concealed may be satisfied by one of the following:
      - (1) Certification of familiarity with a firearm or dangerous weapon by an individual who has been certified by the attorney general, which may include a law enforcement officer, military or civilian firearms instructor, hunter safety instructor, or dangerous weapon instructor;
      - (2) Evidence of equivalent experience with a firearm or dangerous weapon through participation in an organized shooting competition, law enforcement, military service, or dangerous weapon course of training;
      - (3) Possession of a license from another state to carry a firearm or dangerous weapon, concealed or otherwise, which is granted by that state upon completion of a course described in paragraphs 1 and 2; or
      - (4) Evidence that the applicant, during military service, was found to be qualified to operate a firearm or dangerous weapon.
    - b. An applicant for a class 2 license is required to successfully complete the open book test offered for the class 1 license.
    - c. Licenses issued before August 1, 2009, regardless of the age of the licenseholder, convert to a class 2 license upon renewal and no additional testing is required. No additional testing is required to renew a class 2 concealed weapons license. A class 1 license may be renewed upon successful completion of the class 1 requirements within one year before submission of the application for renewal. A license issued under this section before August 1, 2009, and a class 2 license may be upgraded to a class 1 license upon successful completion of the class 1 requirements and satisfaction of the age requirement.
  3. The sheriff is required to process the application within thirty days after the completion of the testing portion unless the application is for renewal of a license and in such case the application must be processed within thirty days after its receipt by the sheriff, the chief of police is required to process the application within ten working days of receipt by the agency, and the bureau of criminal investigation is required to process the application and make a determination within thirty days of receipt from the forwarding agency.

4. The license fee for a concealed weapons license is forty-five dollars, which must be credited to the attorney general's operating fund. The license fee must be paid before the license is issued by the director of the bureau of criminal investigation.
5. The director of the bureau of criminal investigation shall prescribe the form of the application and license, which must include the name, address, description, a photograph, and the signature of the individual. The application form must require sufficient information to properly conduct a background investigation and be accompanied by two sets of classifiable fingerprints. The two sets of classifiable fingerprints are not required for a renewal of a concealed weapons license. The license is valid for five years. The license must be prepared in triplicate, and the original must be delivered to the licensee, the duplicate must be sent by mail, within seven days after issuance, to the sheriff of the county in which the applicant resides, and the triplicate must be preserved for six years by the director. In those cases in which the licensee resides in a city, an additional copy of the license must be made and sent by mail, within seven days after issuance, to the chief of police of the city in which the applicant resides. The individual shall notify the director of the bureau of criminal investigation of any change of address or any other material fact which would affect the restrictions on or the need for the license.
6. The director of the bureau of criminal investigation may deny an application or revoke or cancel a license after it has been granted for any material misstatement by an applicant in an application for the license or any violation of this title.
7. The applicant may appeal a denial or revocation of this license to the district court of Burleigh County.
8. Information collected from an applicant under this section is confidential information. However, the information may be disclosed:
  - a. To a governmental agency or court for a law enforcement purpose, including the investigation, prosecution, or punishment of a violation of law.
  - b. To a court to aid in a decision concerning sentence, probation, or release pending trial or appeal.
  - c. Pursuant to a court order or a judicial, legislative, or administrative agency subpoena issued in this state.
9. The attorney general may adopt any rules necessary to carry out this title.

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

Approved April 4, 2011  
Filed April 4, 2011

# WEEDS

## CHAPTER 505

### SENATE BILL NO. 2147

(Senators Erbele, Olafson)  
(Representatives Hofstad, J. Nelson)

AN ACT to amend and reenact section 63-05-01 of the North Dakota Century Code, relating to cutting weeds and grass along county and township roads.

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

**SECTION 1. AMENDMENT.** Section 63-05-01 of the North Dakota Century Code is amended and reenacted as follows:

#### **63-05-01. Landowners or operators along county and township highways to cut weeds and grasses.**

It is the duty of landowners or operators with land adjoining regularly traveled county and township highways, as designated by the township board of supervisors in organized townships, the board of county commissioners in unorganized townships, and the board of county commissioners in the case of county highways, to cut all weeds and grasses along the regularly traveled highways adjoining their lands, including weeds and grasses growing within the public right of way bordering the highways and their lands. The cutting shall be completed not later than September fifteenth or October first, as prescribed by the board of county commissioners. The board of county commissioners may also, if necessary, require an additional cutting be completed by August first.

Approved April 26, 2011  
Filed April 26, 2011

# WORKFORCE SAFETY AND INSURANCE

## CHAPTER 506

### SENATE BILL NO. 2089

(Industry, Business and Labor Committee)  
(At the request of Workforce Safety and Insurance)

AN ACT to amend and reenact section 65-01-11 of the North Dakota Century Code, relating to burden of proof in compensation matters; and to provide for application.

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

**SECTION 1. 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 49 CFR 383.54 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 ~~required~~ conducted by a physician, qualified technician, chemist, or registered nurse ~~and performed as required by the United States secretary of transportation under 49 CFR part 40~~, at or above the cutoff level in part 40 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 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 2. APPLICATION.** This Act applies to all claims regardless of date of injury.

Approved April 19, 2011  
Filed April 20, 2011



## CHAPTER 507

### SENATE BILL NO. 2205

(Senators Nodland, Klein, Schneider)  
(Representatives Gruchalla, Keiser, Vigesaa)

AN ACT to amend and reenact subsections 4 and 6 of section 65-01-16 and subsection 2 of section 65-04-32 of the North Dakota Century Code, relating to attorney representation in a request for workforce safety and insurance reconsideration, who may file a request for assistance from the decision review office, and service of an employer.

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

**SECTION 1. AMENDMENT.** Subsection 4 of section 65-01-16 of the North Dakota Century Code is amended and reenacted as follows:

4. A party has thirty days from the day the notice of decision was mailed by the organization in which to file a written request for reconsideration. The employer is not required to file the request through an attorney. The request must state the ~~alleged errors in the decision and the relief sought~~reason for disagreement with the organization's decision and the desired outcome. The request may be accompanied by additional evidence not previously submitted to the organization. The organization shall reconsider the matter by informal internal review of the information of record. Absent a timely and sufficient request for reconsideration, the notice of decision is final and may not be reheard or appealed.

**SECTION 2. AMENDMENT.** Subsection 6 of section 65-01-16 of the North Dakota Century Code is amended and reenacted as follows:

6. ~~A party~~An employee has thirty days from the ~~date of service of and~~the administrative order was mailed in which to file a request for assistance from the decision review office under section 65-02-27.

<sup>189</sup> **SECTION 3. AMENDMENT.** Subsection 2 of section 65-04-32 of the North Dakota Century Code is amended and reenacted as follows:

2. An employer has thirty days from the ~~date of service~~day the notice of decision was mailed to file a written petition for reconsideration. The employer is not required to file the request through an attorney. The request must state ~~specifically the alleged errors in the decision and the relief sought~~reason for disagreement with the organization's decision and the desired outcome. The request may be accompanied by additional evidence not previously submitted to the organization. The organization shall reconsider the matter by informal internal review of the information of record. Absent a timely and sufficient request for reconsideration, the notice of decision is final and may not be reheard or appealed.

Approved April 25, 2011  
Filed April 25, 2011

<sup>189</sup> Section 65-04-32 was also amended by section 2 of Senate Bill No. 2114, chapter 512.

## CHAPTER 508

### HOUSE BILL NO. 1056

(Legislative Management)  
(Workers' Compensation Review Committee)

AN ACT to amend and reenact section 65-02-30 of the North Dakota Century Code, relating to the independent performance evaluation of workforce safety and insurance; and to provide for application.

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

**SECTION 1. AMENDMENT.** Section 65-02-30 of the North Dakota Century Code is amended and reenacted as follows:

#### **65-02-30. Independent performance evaluation - Organization development of performance measurements - Continuing appropriation.**

~~Biennially~~Once every four years, the director shall request the state auditor to select a firm with extensive expertise in workers' compensation practices and standards to complete a performance evaluation of the functions and operations of the organization during that ~~biennium~~evaluation period. This may not be construed to require the firm to be a certified public accounting firm. The firm's report must contain recommendations for departmental improvement or an explanation of why no recommendations are being made. The director or the director's designee, the chairman of the board or the chairman's designee, and a representative of the firm shall present the evaluation report and any action taken to the legislative management's workers' compensation review committee and to the governor. The director shall provide a copy of the performance evaluation report to the state auditor. Except as otherwise provided in this section, the workers' compensation review committee may select no more than four elements to be evaluated in the performance evaluation and shall inform the state auditor of the selected items to be evaluated. The state auditor shall include the elements selected by the committee in the performance evaluation, but the state auditor may select additional elements to be evaluated. The total number of elements, including those selected by the workers' compensation review committee, may not exceed eight. In exceptional circumstances, the state auditor may include more than eight elements for evaluation. If more than eight elements are selected, the state auditor shall report to the workers' compensation review committee the additional elements selected and the exceptional circumstances to support the inclusion of the additional elements. Money in the workforce safety and insurance fund is appropriated on a continuing basis for the payment of the expense of conducting the performance evaluation. The organization shall develop and maintain comprehensive, objective performance measurements. These measurements may be evaluated as part of the independent performance evaluation under this section.

**SECTION 2. APPLICATION.** An independent performance evaluation under section 1 of this Act may not be initiated until after December 31, 2013.

Approved March 9, 2011

Filed March 9, 2011

## CHAPTER 509

### HOUSE BILL NO. 1453

(Representative Maragos)  
(Senator Larsen)

AN ACT to amend and reenact subsection 5 of section 65-05-07 of the North Dakota Century Code, relating to workers' compensation coverage for real estate modifications; and to provide for application.

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

<sup>190</sup> **SECTION 1. AMENDMENT.** Subsection 5 of section 65-05-07 of the North Dakota Century Code is amended and reenacted as follows:

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 ~~fifty~~<sup>fifty-seven</sup>~~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 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.

**SECTION 2. APPLICATION.** Section 1 of this Act applies to all purchases and repairs that take place on or after the effective date of this Act.

Approved March 14, 2011  
Filed March 14, 2011

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<sup>190</sup> Section 65-05-07 was also amended by section 3 of Senate Bill No. 2114, chapter 512.

## CHAPTER 510

### HOUSE BILL NO. 1051

(Legislative Management)  
(Workers' Compensation Review Committee)

AN ACT to amend and reenact section 65-05-09.3 of the North Dakota Century Code, relating to workers' compensation benefits upon attaining retirement age; 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 ~~all persons~~ an individual who ~~begin~~ begins receiving social security retirement benefits or other retirement benefits in lieu of social security retirement benefits; or who ~~attain~~ 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.

**SECTION 2. APPLICATION.** This Act applies to an injured employee who attains retirement age for purposes of social security retirement on or after the effective date of this Act.

Approved March 9, 2011  
Filed March 9, 2011

## CHAPTER 511

### HOUSE BILL NO. 1055

(Legislative Management)  
(Workers' Compensation Review Committee)

AN ACT to amend and reenact section 65-05-12.2 of the North Dakota Century Code, relating to workers' compensation permanent partial impairment benefits; and to provide for application.

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

**SECTION 1. AMENDMENT.** Section 65-05-12.2 of the North Dakota Century Code is amended and reenacted as follows:

#### **65-05-12.2. Permanent impairment - Compensation - Time paid.**

A permanent impairment is not intended to be a periodic payment and is not intended to reimburse the employee for specific expenses related to the injury or wage loss. If a compensable injury causes permanent impairment, the organization shall determine a permanent impairment award on the following terms:

- ~~1. If the compensable injury causes permanent impairment and the permanent impairment award payable by the organization is at least two thousand dollars, the injured employee may defer payment of the permanent impairment award for a period of time not to exceed the date the employee reaches age sixty five. A permanent impairment award payable by the organization under this subsection must be paid to the employee in a lump sum that consists of the amount of the award plus any interest that has accrued at the actuarial discount rate in use by the organization. The actuarial discount rate applied to the award is the average actuarial discount rate in effect for the period of deferment of the employee's award. The organization shall adopt rules implementing any necessary procedures for award payments made under this subsection.~~
- ~~2.~~ The organization shall calculate the amount of the award by multiplying ~~thirty three and one third~~ thirty-five percent of the average weekly wage in this state on the date of the impairment evaluation, rounded to the next highest dollar, by the permanent impairment multiplier specified in subsection 10.
- ~~3-2.~~ The organization shall notify the employee by certified mail, to the last-known address of the employee, when that employee becomes potentially eligible for a permanent impairment award. After the organization has notified the employee, the employee shall file, within one hundred eighty days from the date the employee was notified, a written request for an evaluation for permanent impairment. Failure to file the written request within the one hundred eighty-day period precludes an award under this section.
- ~~4-3.~~ An injured employee is entitled to compensation for permanent impairment under this section only for those findings of impairment that are permanent and which were caused by the compensable injury. The organization may not issue an impairment award for impairment findings due to unrelated,

noncompensable, or preexisting conditions, even if these conditions were made symptomatic by the compensable work injury, and regardless of whether section 65-05-15 applies to the claim.

- 5-4. An injured employee is eligible for an evaluation of permanent impairment only when all conditions caused by the compensable injury have reached maximum medical improvement. The injured employee's doctor shall report to the organization the date an employee has reached maximum medical improvement and any evidence of impairment of function the injured employee has after that date. If the report states that the employee is potentially eligible for a permanent impairment award, the organization shall conduct a review and provide notice to the employee as provided by subsection ~~32~~. If the injured employee files a timely written request under subsection ~~32~~, the organization shall schedule an impairment evaluation by a doctor qualified to evaluate the impairment.
- 6-5. A doctor evaluating permanent impairment shall include a clinical report in sufficient detail to support the percentage ratings assigned. The organization shall adopt administrative rules governing the evaluation of permanent impairment. These rules must incorporate principles and practices of the ~~fifth~~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 ~~fifth~~sixth edition of the guides.
- 7-6. The organization shall deduct, on a ~~whole-body~~permanent multiplier basis, from an award for impairment under this section, any previous impairment award ~~for that same member or body part~~ under the workers' compensation laws of any jurisdiction.
- 8-7. An injured employee is not entitled to a permanent impairment award due solely to pain.
8. Other than an award identified in subsection 11, an award may not be issued unless specifically identified and quantified within the sixth edition of the American medical association's "Guides to the Evaluation of Permanent Impairment".
9. If an employee dies, the right to any compensation payable pursuant to an impairment evaluation previously requested by the employee under subsection ~~32~~, which remains unpaid on the date of the employee's death, survives and passes to the employee's dependent spouse, minor children, parents, or estate, in that order. If the employee dies, only those findings of impairment which are objectively verifiable such as values for surgical procedures and amputations may be considered in a rating for impairment. Impairment findings not supported by objectively verifiable evidence may not be included in a rating for impairment. The deceased employee's dependents or representatives shall request an impairment award under this subsection within one year from the date of death of the employee.
10. If the injury causes permanent impairment, the award must be determined based on the percentage of whole body impairment in accordance with the following schedule:

For one to <del>fifteen</del> <u>thirteen</u> percent impairment	permanent impairment multiplier of 0
<u>For fourteen percent impairment</u>	<u>permanent impairment multiplier of 10</u>
<u>For fifteen percent impairment</u>	<u>permanent impairment multiplier of 10</u>
For sixteen percent impairment	permanent impairment multiplier of <del>10</del> <u>15</u>
For seventeen percent impairment	permanent impairment multiplier of <del>10</del> <u>15</u>
For eighteen percent impairment	permanent impairment multiplier of <del>15</del> <u>20</u>
For nineteen percent impairment	permanent impairment multiplier of <del>15</del> <u>20</u>
For twenty percent impairment	permanent impairment multiplier of <del>20</del> <u>25</u>
For twenty-one percent impairment	permanent impairment multiplier of <del>20</del> <u>25</u>
For twenty-two percent impairment	permanent impairment multiplier of <del>25</del> <u>30</u>
For twenty-three percent impairment	permanent impairment multiplier of <del>25</del> <u>30</u>
For twenty-four percent impairment	permanent impairment multiplier of 30
For twenty-five percent impairment	permanent impairment multiplier of <del>30</del> <u>35</u>
For twenty-six percent impairment	permanent impairment multiplier of 35
For twenty-seven percent impairment	permanent impairment multiplier of 35
For twenty-eight percent impairment	permanent impairment multiplier of 40
For twenty-nine percent impairment	permanent impairment multiplier of 45
For thirty percent impairment	permanent impairment multiplier of 50
For thirty-one percent impairment	permanent impairment multiplier of 60
For thirty-two percent impairment	permanent impairment multiplier of 70
For thirty-three percent impairment	permanent impairment multiplier of 80
For thirty-four percent impairment	permanent impairment multiplier of 90
For thirty-five percent impairment	permanent impairment multiplier of 100
For thirty-six percent impairment	permanent impairment multiplier of 110
For thirty-seven percent impairment	permanent impairment multiplier of 120
For thirty-eight percent impairment	permanent impairment multiplier of 130
For thirty-nine percent impairment	permanent impairment multiplier of 140



For forty percent impairment	permanent impairment multiplier of 150
For forty-one percent impairment	permanent impairment multiplier of 160
For forty-two percent impairment	permanent impairment multiplier of 170
For forty-three percent impairment	permanent impairment multiplier of 180
For forty-four percent impairment	permanent impairment multiplier of 190
For forty-five percent impairment	permanent impairment multiplier of 200
For forty-six percent impairment	permanent impairment multiplier of 210
For forty-seven percent impairment	permanent impairment multiplier of 220
For forty-eight percent impairment	permanent impairment multiplier of 230
For forty-nine percent impairment	permanent impairment multiplier of 240
For fifty percent impairment	permanent impairment multiplier of 260
For fifty-one percent impairment	permanent impairment multiplier of 280
For fifty-two percent impairment	permanent impairment multiplier of 300
For fifty-three percent impairment	permanent impairment multiplier of 320
For fifty-four percent impairment	permanent impairment multiplier of 340
For fifty-five percent impairment	permanent impairment multiplier of 360
For fifty-six percent impairment	permanent impairment multiplier of 380
For fifty-seven percent impairment	permanent impairment multiplier of 400
For fifty-eight percent impairment	permanent impairment multiplier of 420
For fifty-nine percent impairment	permanent impairment multiplier of 440
For sixty percent impairment	permanent impairment multiplier of 465
For sixty-one percent impairment	permanent impairment multiplier of 490
For sixty-two percent impairment	permanent impairment multiplier of 515
For sixty-three percent impairment	permanent impairment multiplier of 540
For sixty-four percent impairment	permanent impairment multiplier of 565
For sixty-five percent impairment	permanent impairment multiplier of 590
For sixty-six percent impairment	permanent impairment multiplier of 615

For sixty-seven percent impairment	permanent impairment multiplier of 640
For sixty-eight percent impairment	permanent impairment multiplier of 665
For sixty-nine percent impairment	permanent impairment multiplier of 690
For seventy percent impairment	permanent impairment multiplier of 715
For seventy-one percent impairment	permanent impairment multiplier of 740
For seventy-two percent impairment	permanent impairment multiplier of 765
For seventy-three percent impairment	permanent impairment multiplier of 790
For seventy-four percent impairment	permanent impairment multiplier of 815
For seventy-five percent impairment	permanent impairment multiplier of 840
For seventy-six percent impairment	permanent impairment multiplier of 865
For seventy-seven percent impairment	permanent impairment multiplier of 890
For seventy-eight percent impairment	permanent impairment multiplier of 915
For seventy-nine percent impairment	permanent impairment multiplier of 940
For eighty percent impairment	permanent impairment multiplier of 965
For eighty-one percent impairment	permanent impairment multiplier of 990
For eighty-two percent impairment	permanent impairment multiplier of 1015
For eighty-three percent impairment	permanent impairment multiplier of 1040
For eighty-four percent impairment	permanent impairment multiplier of 1065
For eighty-five percent impairment	permanent impairment multiplier of 1090
For eighty-six percent impairment	permanent impairment multiplier of 1115
For eighty-seven percent impairment	permanent impairment multiplier of 1140
For eighty-eight percent impairment	permanent impairment multiplier of 1165
For eighty-nine percent impairment	permanent impairment multiplier of 1190
For ninety percent impairment	permanent impairment multiplier of 1215
For ninety-one percent impairment	permanent impairment multiplier of 1240
For ninety-two percent impairment	permanent impairment multiplier of 1265
For ninety-three percent impairment	permanent impairment multiplier of 1290

For ninety-four percent impairment	permanent impairment multiplier of 1320
For ninety-five percent impairment	permanent impairment multiplier of 1350
For ninety-six percent impairment	permanent impairment multiplier of 1380
For ninety-seven percent impairment	permanent impairment multiplier of 1410
For ninety-eight percent impairment	permanent impairment multiplier of 1440
For ninety-nine percent impairment	permanent impairment multiplier of 1470
For one hundred percent impairment	permanent impairment multiplier of 1500

11. An amputation of a finger or toe at the level of the distal interphalangeal joint or proximal to that joint, or the thumb or the great toe at the interphalangeal joint or proximal to that joint, which is determined to result in a whole body impairment of less than sixteen percent and which is not identified in the following schedule, is payable as a sixteen percent impairment. If an evaluation for the loss of an eye or for an amputation results in an award that is less than the permanent impairment multiplier identified in the following schedule, the organization shall pay an award equal to the permanent impairment multiplier set out in the following schedule:

For amputation of a thumb	permanent impairment multiplier of 65
For amputation of the second or distal phalanx of the thumb	permanent impairment multiplier of 28
For amputation of the first finger	permanent impairment multiplier of 40
For amputation of the middle or second phalanx of the first finger	permanent impairment multiplier of 28
For amputation of the third or distal phalanx of the first finger	permanent impairment multiplier of 22
For amputation of the second finger	permanent impairment multiplier of 30
For amputation of the middle or second phalanx of the second finger	permanent impairment multiplier of 22
For amputation of the third or distal phalanx of the second finger	permanent impairment multiplier of 14
For amputation of the third finger	permanent impairment multiplier of 20
For amputation of the middle or second phalanx of the third finger	permanent impairment multiplier of 16
For amputation of the fourth finger	permanent impairment multiplier of 16
For amputation of the middle or second phalanx of the fourth finger	permanent impairment multiplier of 12
For amputation of the leg at the hip	permanent impairment multiplier of 234
For amputation of the leg at or above the knee	permanent impairment multiplier of 195
For amputation of the leg at or above the ankle	permanent impairment multiplier of 150

For amputation of a great toe	permanent impairment multiplier of 30
For amputation of the second or distal phalanx of the great toe	permanent impairment multiplier of 18
For amputation of any other toe	permanent impairment multiplier of 12
For loss of an eye	permanent impairment multiplier of 150
For the loss of vision of an eye which equals or exceeds 20/200 corrected	permanent impairment multiplier of 100

The award for the amputation of more than one finger of one hand may not exceed an award for the amputation of a hand. The award for the amputation of more than one toe of one foot may not exceed an award for the amputation of a foot. If any of the amputations or losses set out in this subsection combine with other impairments for the same work-related injury or condition, the organization shall issue an impairment award based on the greater of the permanent impairment multiplier allowed for the combined rating established under the ~~fifth~~<sup>sixth</sup> edition of the American medical association's "Guides to the Evaluation of Permanent Impairment" or the permanent impairment multiplier set forth in this subsection.

12. If there is a medical dispute regarding the percentage of an injured employee's permanent impairment, all relevant medical evidence must be submitted to an independent doctor who has not treated the employee and who has not been consulted by the organization in relation to the injury upon which the impairment is based. The organization shall establish ~~lists a list~~ of doctors who ~~are qualified by the doctor's~~ have the training, and experience, and area of practice to rate necessary to conduct an evaluation of permanent impairments caused by various types of injuries 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 ~~and the injured employee~~ shall choose an independent doctor or doctors to review a disputed permanent impairment evaluation or rating. The decision of the independent doctor or doctors chosen under this process is presumptive evidence of the degree of permanent impairment of the employee which can only be rebutted by clear and convincing evidence. This subsection does not impose liability on the organization for an impairment award for a rating of impairment for a body part or condition the organization has not determined to be compensable as a result of the injury. The employee bears the expense of witness fees of the independent doctor or doctors if the employee disputes the findings of the independent doctor or doctors.
13. An attorney's fees are not payable unless there is a bona fide dispute as to the percentage of the employee's permanent impairment or unless there is a dispute as to the employee's eligibility for an award for permanent partial impairment. An attorney's fees payable in connection with a permanent impairment dispute may not exceed twenty percent of the additional amount awarded upon final resolution of the dispute, subject to the maximum fees established pursuant to section 65-02-08.
14. An attorney may not seek or obtain from an employee through a contingent fee arrangement, or on a percentage basis, costs or fees payable in connection with the award or denial of compensation for permanent

impairment. A permanent impairment award is exempt from the claims of creditors, including an employee's attorney, except as provided by section 65-05-29.

15. If an injured employee qualifies for an additional award and the prior award was based upon the number of weeks, the impairment multiplier must be used to compare against the prior award of weeks in determining any additional award.

**SECTION 2. APPLICATION.** This Act applies to permanent partial impairment evaluations performed on or after the effective date of this Act.

Approved April 4, 2011  
Filed April 4, 2011

## CHAPTER 512

### SENATE BILL NO. 2114

(Industry, Business and Labor Committee)  
(At the request of Workforce Safety and Insurance)

AN ACT to create and enact a new subdivision to subsection 2 of section 12-60-24 of the North Dakota Century Code, relating to background checks for potential workforce safety and insurance job applicants; to amend and reenact subsection 3 of section 65-04-32, subdivision h of subsection 8 of section 65-05-07, section 65-05-20.1, subsection 2 of section 65-05-28, subsection 4 of section 65-05.1-04, subdivision b of subsection 2 of section 65-05.1-06.1, and subsection 1 of section 65-05.1-08 of the North Dakota Century Code, relating to service of administrative orders by regular mail, nonpayment of weight loss and smoking programs unless ordered by the organization, eligibility for the scholarship program, travel reimbursements for injured workers, work trial and work search, payment of mileage during training programs, and eligibility for the revolving loan fund; and to provide for application.

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

<sup>191</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:

Workforce safety and insurance for a final applicant for a specified occupation with workforce safety and insurance as designated by the director, or for contractors who may have access to confidential information as designated by the director.

<sup>192</sup> **SECTION 2. 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 receiving a petition for reconsideration, unless settlement negotiations are ongoing, the organization shall serve on the parties by certified mail an administrative order including its findings of fact, conclusions of law, and order, in response to the petition for reconsideration. 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.

<sup>193</sup> **SECTION 3. AMENDMENT.** Subdivision h of subsection 8 of section 65-05-07 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>191</sup> Section 12-60-24 was also amended by section 1 of House Bill No. 1081, chapter 94, section 1 of Senate Bill No. 2097, chapter 328, and section 1 of Senate Bill No. 2199, chapter 327.

<sup>192</sup> Section 65-04-32 was also amended by section 3 of Senate Bill No. 2205, chapter 507.

<sup>193</sup> Section 65-05-07 was also amended by section 1 of House Bill No. 1453, chapter 509.

- h. Aids or programs primarily intended to help the employee lose weight or stop smoking unless ordered by the organization.

**SECTION 4. AMENDMENT.** Section 65-05-20.1 of the North Dakota Century Code is amended and reenacted as follows:

**65-05-20.1. Scholarship fund - Rules.**

The organization may establish a scholarship fund to provide scholarships for the spouse and ~~dependent children~~ child of a worker who dies as a result of a compensable work-related injury, if the spouse and ~~children~~ child have received benefits under section 65-05-17. The organization may also grant scholarships for the spouse and child of an injured worker deemed to be catastrophically injured as defined in subdivision c of subsection 2 of section 65-05.1-06.1 and the child meets the definition of child at the time of the initial scholarship application. The organization may also grant scholarships to injured workers for whom the organization determines a scholarship would be beneficial and appropriate because of exceptional circumstances, or upon successful completion of a rehabilitation program contemplated under subdivision g of subsection 4 of section 65-05.1-01, as determined by the organization. Scholarships are payable to an accredited institution of higher education or an institution of technical education on behalf of a student attending that institution. The total amount awarded annually in scholarships may not exceed ~~three~~ five hundred thousand dollars. The maximum amount payable on behalf of an applicant is ~~four~~ ten thousand dollars per year for no more than five years, ~~except that scholarships awarded on the basis of exceptional circumstances may not exceed ten thousand dollars per year for more than five years, per applicant~~ the combined retraining and scholarship periods for applicants successfully completing a rehabilitation program under subdivision g of subsection 4 of section 65-05.1-01 may not exceed five years. Scholarships must be awarded by a panel chosen by the organization. The organization shall adopt rules establishing selection criteria and obligations associated with the program and identifying information an applicant is required to submit to determine an appropriate scholarship award. There is no right to reconsideration, rehearing, or appeal from any decision regarding the award, denial, or amount of a scholarship.

**SECTION 5. AMENDMENT.** Subsection 2 of section 65-05-28 of the North Dakota Century Code is amended and reenacted as follows:

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. 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 ~~meals and~~ 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 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.

**SECTION 6. AMENDMENT.** Subsection 4 of section 65-05.1-04 of the North Dakota Century Code is amended and reenacted as follows:

- 4. If the first appropriate rehabilitation option under subsection 4 of section 65-05.1-01 is return to the same, modified, or alternative occupation, or return to an occupation that is suited to the employee's education, experience, and marketable skills, the employee is responsible to make a good-faith work trial or work search. If the employee fails to perform a good-faith work trial or work search, the organization may not pay additional disability benefits unless the employee meets the criteria for reapplying for benefits required under subsection 1 of section 65-05-08. If the employee meets the burden of proving that the employee made a good-faith work trial or work search and that the work trial or work search was unsuccessful due to the injury, the organization shall reevaluate the employee's vocational rehabilitation claim. When the first appropriate vocational rehabilitation option is identified for an employee, the organization shall notify the employee of the obligation to make a good-faith work search or good-faith work trial, and provide information to the employee regarding reinstatement of benefits if the work search or work trial is unsuccessful.

**SECTION 7. AMENDMENT.** Subdivision b of subsection 2 of section 65-05.1-06.1 of the North Dakota Century Code is amended and reenacted as follows:

- b. The rehabilitation allowance must include, as chosen by the employee, an additional thirty percent of the rehabilitation allowance for expenses associated with maintaining a second domicile or for travel associated with attendance at a school or training institution when it is necessary for the employee to travel at least twenty-five miles [40.23 kilometers] one way. Travel must be calculated from the employee's residence to the school or training institution. If it is necessary for an employee to travel less than twenty-five miles one way to a school or training institution, the employee may qualify for an additional rehabilitation allowance as determined in accordance with the following schedule:

	Percentage increase in rehabilitation allowance
Round-trip mileage	
Under 10 miles	0
10 to 30 miles	10
31 to <del>50</del> <u>49</u> miles	20



Travel must be calculated from the employee's residence to the school or training institution.

**194 SECTION 8. AMENDMENT.** Subsection 1 of section 65-05.1-08 of the North Dakota Century Code is amended and reenacted as follows:

1. The organization may establish a revolving loan fund to provide a low-interest loan to an injured employee or to a surviving spouse or ~~dependent~~ child of an injured employee whose death resulted from a compensable injury under section 65-05-16; or to the spouse or child of an injured employee deemed to be catastrophically injured as defined in subdivision c of subsection 2 of section 65-05.1-06.1 and the child meets the definition of child at the time of the initial loan application; or to the spouse or child of an injured employee deemed to be eligible for permanent total disability benefits as defined in section 65-01-02 and the child meets the definition of child at the time of the initial loan application. The loan must be used to pursue an education at an accredited institution of higher education or an institution of technical education. In order to be eligible for a loan under this section, an individual must have obtained a high school diploma or its equivalent and either must be ineligible for retraining under this chapter or must have exhausted training and education benefits. The Bank of North Dakota and the organization shall establish eligibility requirements and make application determinations based on the established criteria. The application must require an applicant to demonstrate a viable education plan that will enable the individual to achieve gainful employment.

**SECTION 9. APPLICATION.** Scholarships granted and increased amounts payable as provided for in section 4 of this Act apply to all applications received and rehabilitation programs completed on or after the effective date of this Act.

The amendment provided for in section 5 of this Act applies to expenses submitted on or after the effective date of this Act.

The amendment provided for in section 6 of this Act applies to all claims regardless of date of injury.

The amendment provided for in section 8 of this Act pertaining to applications for low-interest educational loans for the spouse or child of an injured worker deemed to be catastrophically injured applies to all applications received on or after the effective date of this Act.

The amendment provided for in section 8 of this Act pertaining to applications for low-interest educational loans applies to the spouse or child of an injured employee whose claim was filed on or after January 1, 2006, and has been deemed permanently and totally disabled.

Approved April 27, 2011  
Filed April 27, 2011

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<sup>194</sup> Section 65-05.1-08 was also amended by section 1 of House Bill No. 1050, chapter 513.

## CHAPTER 513

### HOUSE BILL NO. 1050

(Legislative Management)  
(Workers' Compensation Review Committee)

AN ACT to amend and reenact section 65-05.1-08 of the North Dakota Century Code, relating to a workers' compensation grant program for vocational rehabilitation; and to provide a continuing appropriation.

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

<sup>195</sup> **SECTION 1. AMENDMENT.** Section 65-05.1-08 of the North Dakota Century Code is amended and reenacted as follows:

#### **65-05.1-08. Workforce safety and insurance educational revolving loan fund - Vocational rehabilitation grants - Continuing appropriation.**

1. The organization may establish a revolving loan fund to provide a low-interest loan to an injured employee or to a surviving spouse or dependent child of an injured employee whose death resulted from a compensable injury under section 65-05-16. The loan must be used to pursue an education at an accredited institution of higher education or an institution of technical education. In order to be eligible for a loan under this section, an individual must have obtained a high school diploma or its equivalent and either must be ineligible for retraining under this chapter or must have exhausted training and education benefits. The Bank of North Dakota and the organization shall establish loan eligibility requirements and make application determinations based on the established criteria. The loan application must require an applicant to demonstrate a viable education plan that will enable the individual to achieve gainful employment.
2. The total amount loaned annually under this section may not exceed two million five hundred thousand dollars. The maximum amount payable on behalf of ~~an~~ a loan applicant may not exceed fifty thousand dollars and must be payable within five years. A loan must be repaid within a period not to exceed twenty years. A loan must be repaid at an interest rate established by the organization which may not exceed the rate of one percent below the Bank of North Dakota's prime interest rate. The organization shall pay the Bank of North Dakota a negotiated fee for administering and servicing loans under this section. At the organization's discretion, moneys to establish and maintain the revolving loan fund must be appropriated from the organization's workforce safety and insurance fund. The revolving loan fund is a special fund and must be invested pursuant to section 21-10-06. Investment income and collections of interest and principal on loans made from the revolving loan fund are appropriated on a continuing basis to maintain the fund and provide loans in accordance with this section. ~~The~~ As determined necessary, the organization, ~~as determined necessary,~~ may transfer uncommitted moneys of the revolving loan fund to the workforce safety and insurance fund.

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<sup>195</sup> Section 65-05.1-08 was also amended by section 8 of Senate Bill No. 2114, chapter 512.

3. The organization may implement a grant program to promote and provide necessary educational opportunities for injured employees within the vocational rehabilitation process. The organization may award a grant to promote necessary skills upgrading and to provide for the completion of remedial educational requirements which allow for optimal transition into the labor force. The total annual amount the organization may grant under this subsection may not exceed one hundred thousand dollars. The organization shall establish grant eligibility requirements and make grant determinations based on the established criteria. Moneys are appropriated on a continuing basis from uncommitted moneys in the educational revolving loan fund for the purpose of funding the grants under this subsection.

Approved March 9, 2011  
Filed March 9, 2011

## CHAPTER 514

### HOUSE BILL NO. 1037

(Legislative Management)  
(Industry, Business, and Labor Committee)

AN ACT to amend and reenact section 65-06.2-09 of the North Dakota Century Code, relating to the safety and performance audit of work programs of roughrider industries.

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

**SECTION 1. AMENDMENT.** Section 65-06.2-09 of the North Dakota Century Code is amended and reenacted as follows:

**65-06.2-09. Safety and performance ~~audit~~review.**

The organization shall perform a biennial safety ~~audit~~review of the roughrider industries work programs covered under this chapter and a biennial performance ~~audit~~review of the program of modified workers' compensation coverage. ~~The~~ the organization makes any recommendation for a change in either program as a result of the review, the organization shall submit a report with recommendations based on the safety and performance auditthe recommendation to the legislative council no later than thirty days before the commencement of each regular session of the legislative assembly.

Approved March 9, 2011  
Filed March 9, 2011

# VETOED MEASURES

## CHAPTER 515

### SENATE BILL NO. 2015

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

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, the superintendent of public instruction, the state board of higher education, and the department of human services; to create and enact a new section to chapter 48-01.2, a new subdivision to subsection 1 of section 54-10-14, and a new section to chapter 54-27 of the North Dakota Century Code and a new section to House Bill No. 1185, a new section to Senate Bill No. 2083, and a new subdivision to subsection 6 of section 1 of House Bill No. 1438, as approved by the sixty-second legislative assembly, relating to public improvement bids and contracts, entities required to be audited by the state auditor, a report on federal grants, an emergency declaration, and an employer's prohibition on firearm possession; to amend and reenact section 39-02-03, subdivision a of subsection 2 of section 54-03-20, and sections 54-16-03.1 and 54-35-02.3 of the North Dakota Century Code and sections 1 and 8 of House Bill No. 1014 and sections 1 and 8 of House Bill No. 1020, as approved by the sixty-second legislative assembly, relating to the powers and duties of the director of the department of transportation, housing reimbursement for members of the legislative assembly, petitions to the emergency commission, legislative management employee benefits programs committee, appropriations for the industrial commission, and appropriations to the branch research centers; to provide an exemption; to provide for various transfers; to provide legislative intent; to provide for legislative management reports; and to declare an emergency.

VETO

May 18, 2011

The Honorable Drew Wrigley  
Senate Chambers  
President of the Senate  
State Capitol  
Bismarck, ND 58505

RE: Senate Bill 2015

Dear President Wrigley:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed Sections 12, 25, and 31 of Senate Bill 2015 and returned it to the Senate.

Section 12 is vetoed because it would infringe upon the executive authority of the Governor to submit proposed legislative initiatives to the Legislature. Article V, Section 7 of the North Dakota Constitution states: the "governor shall present information on the condition of the state, together with any recommended legislation, to every regular and special session of the legislative assembly." "As all of the

branches derive their authority from the same constitution, there is an implied exclusion of each branch from the exercise of the functions of the others." City of Carrington v. Foster County, 166 N.W.2d 377, 382 (N.D. 1969). The primary function of the executive branch is to manage the affairs of the state, including the careful budgeting of resources. This budgeting process necessarily involves making recommendations to the Legislature that contain executive branch assessments of the amount and preferred allocation of resources needed to fulfill legislative policies. Section 12 would impermissibly mandate the manner in which the executive carries out its constitutional responsibilities and is therefore unconstitutional.

Section 25 is vetoed because it would require OMB approval of any change order or expenses which exceed the bid amount on state contracts. Large projects have numerous change orders, ranging from insignificant adjustments having little fiscal impact to significant changes that warrant more review and oversight. If this section were enacted, OMB would have to review and approve hundreds of funding requests each quarter that would typically be handled by statewide elected officials and agency directors. This process would be inefficient, ineffective, and unworkable, with the inevitable result of project delays and increased costs for all parties. With respect to higher education projects, certain requirements addressing this issue have been established in other provisions of the North Dakota Century Code. For example, Senate Bill 2323, enacted during the 2011 legislative session, requires monthly variance reports to the Director of the Office of Management and Budget for higher education construction projects budgeted for over \$250,000. These monthly reports are made available to the Budget Section upon request. The variance reports must include the amount of any change orders, as well as the amount of any potential or anticipated change orders. Reporting change orders in this manner retains sufficient oversight over projects while not imposing needless administrative burdens that Section 25 would have required.

Section 31 is vetoed because it requires the Department of Commerce to seek emergency commission and budget section approval before awarding or spending funds for tourism infrastructure grants. The Supreme Court has provided that except "as otherwise provided in the constitution, the Legislature may not delegate legislative powers to others, including a subset of its members...." Kelsh v. Jaeger, 641 N.W.2d 100 ¶21 (N.D. 2002). The Legislature may delegate certain powers to ascertain fact; however, the full legislature "must set forth reasonably clear guidelines to enable the appropriate body to ascertain the facts." Id. Section 18 of Senate Bill 2057 contains the \$750,000 appropriation for tourism infrastructure grants, stating only that "[t]he department of commerce shall use \$750,000 of these funds for tourism infrastructure grants." This delegation of decision-making authority to the budget section would constitute an impermissible delegation of legislative powers to a subset of the Legislature's members.

For these reasons, I have vetoed Sections 12, 25, and 31 of Senate Bill 2015.

Sincerely,

Jack Dalrymple  
Governor

Disapproved May 18, 2011  
Filed May 18, 2011

NOTE: For the full text of Senate Bill No. 2015, including sections 12, 25, and 31, see chapter 41.

## CHAPTER 516

### SENATE BILL NO. 2020

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

AN ACT to provide an appropriation for defraying the expenses of the state water commission; to create and enact a new subsection to section 11-37-02 and a new section to chapter 61-04 of the North Dakota Century Code, relating to joint powers entities and commerce authorities and metering certain water sources; to amend and reenact subsection 2 of section 11-37-03, section 11-37-04, subsection 8 of section 11-37-06, and subsection 1 of section 11-37-08 of the North Dakota Century Code and section 7 of chapter 20 of the 2009 Session Laws, relating to conversion of joint powers entities to commerce authorities and additional powers of commerce authorities and Fargo flood control project funding; to provide exemptions; to provide a transfer; to repeal section 5 of chapter 535 of the 1999 Session Laws, relating to pledge of revenues from the Grand Forks corporate center; to provide legislative intent; to provide for retroactive application; to provide for application; to provide an expiration date; and to declare an emergency.

VETO

May 18, 2011

The Honorable Drew Wrigley  
President, ND Senate  
State Capitol  
Bismarck, ND 58505

RE: Senate Bill 2020

Dear President Wrigley:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed Sections 9 and 15 of Senate Bill 2020 and returned it to the Senate.

Sections 9 and 15 are vetoed because they would enact an unworkable metering regime that is not well suited to serve the needs of the state. The State Water Commission is in the best position to develop and enforce an efficient, effective system of water metering, including sealed meters, regular reporting, periodic compliance checks, and appropriate administrative oversight. The installation of remote metering devices mandates a system that may be more susceptible to tampering or circumvention than more conventional metering and reporting systems. Furthermore, the State Water Commission is the appropriate entity to devise penalties adequate to deter water permit violations and enforce proper use of water meters. Each of these objectives may be achieved administratively without the need for the \$500,000 of project funds specified in Section 9, an amount I am concerned may grow significantly if a remote metering program were expanded statewide.

Therefore, sections 9 and 15 of Senate Bill 2020 are vetoed because the State Water Commission will be better able to administer an effective, efficient statewide water meter system that will best serve the public long term.

Sincerely,

Jack Dalrymple  
Governor

Disapproved May 18, 2011  
Filed May 18, 2011

NOTE: For the full text of Senate Bill No. 2020, including sections 9 and 15, see chapter 46.



# INITIATED MEASURE DISAPPROVED

## CHAPTER 517

### CAPTIVE GAME ANIMAL KILLING PROHIBITED

This initiated measure would add a new section to chapter 36-01 of the North Dakota Century Code effective November 1, 2012, providing that a person, other than an authorized government employee or agent, is guilty of a crime if the person obtains payment for the killing or attempted killing of privately owned big game species or exotic mammals in or released from a man-made enclosure.

#### BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

**SECTION 1.** A new section to chapter 36-01 of the North Dakota Century Code is created and enacted as follows:

**Fee killing of certain captive game animals prohibited - Penalty - Exception.**

A person is guilty of a class A misdemeanor if the person obtains fees or other remuneration from another person for the killing or attempted killing of privately-owned big game species or exotic mammals confined in or released from any man-made enclosure designed to prevent escape. This section does not apply to the actions of a government employee or agent to control an animal population, to prevent or control diseases, or when government action is otherwise required or authorized by law.

**SECTION 2. EFFECTIVE DATE.** This Act becomes effective on November 1, 2012.

Disapproved November 2, 2010

99,852 to 130,272

NOTE: This was measure No. 2 on the general election ballot.

# CONSTITUTIONAL AMENDMENT APPROVED

## CHAPTER 518

### HOUSE CONCURRENT RESOLUTION NO. 3054

(Representatives Weiler, Boucher, Carlson)  
(Senators Stenehjem, O'Connell, Triplett)

### NORTH DAKOTA LEGACY FUND

A concurrent resolution to create and enact a new section to article X of the Constitution of North Dakota, relating to establishment and use of a North Dakota legacy fund; and to provide an effective date.

#### STATEMENT OF INTENT

This measure establishes a North Dakota legacy fund, provides for deposit of certain oil and gas tax revenues in the fund, and imposes limitations on use of moneys in the fund.

#### BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the following proposed new section to article X of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in 2010, in accordance with section 16 of article IV of the Constitution of North Dakota.

**SECTION 1.** A new section to article X of the Constitution of North Dakota is created and enacted as follows:

1. Thirty percent of total revenue derived from taxes on oil and gas production or extraction must be transferred by the state treasurer to a special fund in the state treasury known as the legacy fund. The legislative assembly may transfer funds from any source into the legacy fund and such transfers become part of the principal of the legacy fund.
2. The principal and earnings of the legacy fund may not be expended until after June 30, 2017, and an expenditure of principal after that date requires a vote of at least two-thirds of the members elected to each house of the legislative assembly. Not more than fifteen percent of the principal of the legacy fund may be expended during a biennium.
3. Statutory programs, in existence as a result of legislation enacted through 2009, providing for impact grants, direct revenue allocations to political subdivisions, and deposits in the oil and gas research fund must remain in

effect but the legislative assembly may adjust statutory allocations for those purposes.

The state investment board shall invest the principal of the North Dakota legacy fund. The state treasurer shall transfer earnings of the North Dakota legacy fund accruing after June 30, 2017, to the state general fund at the end of each biennium.

**SECTION 2. EFFECTIVE DATE.** If approved by the voters, this measure becomes effective for oil and gas produced after June 30, 2011.

Approved November 2, 2010

141,783 to 81,245

NOTE: This was measure No. 1 on the general election ballot.

# CONSTITUTIONAL AMENDMENTS PROPOSED

## CHAPTER 519

### HOUSE CONCURRENT RESOLUTION NO. 3047

(Representatives Carlson, Koppelman)  
(Senator Christmann)

### LEGISLATOR APPOINTMENT TO STATE OFFICE

A concurrent resolution to amend and reenact section 6 of article IV of the Constitution of North Dakota, relating to the appointment of a member of the legislative assembly to a full-time appointive state office.

#### STATEMENT OF INTENT

This measure provides that a member of the legislative assembly may not be appointed to an office for which the compensation has been increased in an amount greater than any general increase provided to full-time state employees by the legislative assembly during that member's term of office.

#### BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the following proposed amendment to section 6 of article IV of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the primary election to be held in 2012, in accordance with section 16 of article IV of the Constitution of North Dakota.

**SECTION 1. AMENDMENT.** Section 6 of article IV of the Constitution of North Dakota is amended and reenacted as follows:

**Section 6.** While serving in the legislative assembly, no member may hold any full-time appointive state office established by this constitution or designated by law. During the term for which elected, no member of the legislative assembly may be appointed to any full-time office ~~which that~~ has been created, ~~or by the legislative assembly.~~ During the term for which elected, no member of the legislative assembly may be appointed to any full-time office for which the compensation has been increased, by the legislative assembly during that term has increased the compensation in an amount greater than the general rate of increase provided to full-time state employees.

Filed April 20, 2011

NOTE: This will be measure No. 1 on the 2012 primary election ballot.

## CHAPTER 520

### SENATE CONCURRENT RESOLUTION NO. 4006

(Senators Dever, Lyson, Mathern)  
(Representatives L. Meier, Koppelman)

### POLL TAX ELIMINATED

A concurrent resolution for the repeal of section 6 of article X of the Constitution of North Dakota, relating to elimination of the authority for the legislative assembly to levy an annual poll tax.

#### STATEMENT OF INTENT

This measure removes the constitutional provision allowing the legislative assembly to levy an annual poll tax of not more than one dollar and fifty cents on every male inhabitant of this state over twenty-one and under fifty years of age, except paupers, idiots, insane persons, and Indians not taxed.

#### BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed repeal of section 6 of article X of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in 2012, in accordance with section 16 of article IV of the Constitution of North Dakota.

**SECTION 1. REPEAL.** Section 6 of article X of the Constitution of North Dakota is repealed.

Filed April 15, 2011

NOTE: This will be measure No. 1 on the 2012 general election ballot.

## CHAPTER 521

### HOUSE CONCURRENT RESOLUTION NO. 3009

(Representatives Conklin, Koppelman)  
(Senators Mathern, Warner)

#### OATHS OF OFFICE

A concurrent resolution for the amendment of section 4 of article XI of the Constitution of North Dakota, relating to oaths of office of elected and appointed officials.

##### STATEMENT OF INTENT

This amendment provides that members of the executive branch are required to take the oath prescribed by this section.

##### BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the following proposed amendment to section 4 of article XI of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in 2012, in accordance with section 16 of article IV of the Constitution of North Dakota.

**SECTION 1. AMENDMENT.** Section 4 of article XI of the Constitution of North Dakota is amended and reenacted as follows:

**Section 4.** Members of the legislative assembly and the executive and judicial ~~department~~branches, except such inferior officers as may be by law exempted ~~shall~~, before they enter on the duties of their respective offices, shall take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm as the case may be) that I will support the Constitution of the United States and the Constitution of the State of North Dakota; and that I will faithfully discharge the duties of the office of \_\_\_\_\_ according to the best of my ability, so help me God" (if an oath), (under pains and penalties of perjury) if an affirmation, and ~~no~~any other oath, declaration, or test ~~shall~~may not be required as a qualification for any office or public trust.

Filed April 20, 2011

NOTE: This will be measure No. 2 on the 2012 general election ballot.

# HOUSE CONCURRENT RESOLUTIONS

## CHAPTER 522

### HOUSE CONCURRENT RESOLUTION NO. 3001

(Legislative Management)  
(Agriculture Committee)

A concurrent resolution directing the Legislative Management to continue its study of North Dakota Century Code provisions that relate to agriculture.

**WHEREAS**, many of the North Dakota Century Code provisions that relate to agriculture are inconsistent or unclear in their intent and direction; and

**WHEREAS**, many of the North Dakota Century Code provisions that relate to agriculture are not reflective of current practices or needs; and

**WHEREAS**, many of the North Dakota Century Code provisions that relate to agriculture are illogically arranged or placed; and

**WHEREAS**, the Legislative Management's interim Agriculture Committee conducted studies during the two preceding interims which resulted in recommendations for the revision of numerous North Dakota Century Code chapters that relate to agriculture;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Management continue its study of North Dakota Century Code provisions that relate to agriculture for the purpose of recommending changes to laws that are found to be irrelevant, inconsistent, illogically arranged, or unclear in their intent and direction; 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-third Legislative Assembly.

Filed March 28, 2011

## CHAPTER 523

### HOUSE CONCURRENT RESOLUTION NO. 3002

(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 moneys expected for the next biennium by the Department of Commerce; and

**WHEREAS**, the Sixty-second Legislative Assembly cannot hold public hearings on revisions to current block grants or additional block grants that may be approved by Congress after the recess or adjournment of the Legislative Assembly; and

**WHEREAS**, the Legislative Assembly will not meet in regular session during 2012 and thus its public hearing responsibility for grants not approved by the Sixty-second Legislative Assembly must be delegated to a legislative entity;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Department of Commerce appropriation bill enacted by the Legislative Assembly is the Legislative Assembly's approval of and contains directions regarding the use of community services block grant moneys for the period ending September 30, 2013; 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-second Legislative Assembly through September 30, 2013, 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 28, 2011



## CHAPTER 524

### HOUSE CONCURRENT RESOLUTION NO. 3003

(Legislative Management)  
(Industry, Business, and Labor Committee)

A concurrent resolution directing the Legislative Management to continue studying the impact of federal health care reform legislation on this state.

**WHEREAS**, in March 2010, the United States Congress adopted the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act; and

**WHEREAS**, during the 2009-10 interim, the Legislative Management's interim Industry, Business, and Labor Committee monitored the consideration and subsequent adoption of the federal health care reform legislation and attempted to determine the fiscal impact of the legislation on the state; and

**WHEREAS**, the full impact of the federal health care reform legislation on this state and its citizens, health care providers, and health insurers will not be determined until the legislation becomes fully implemented and corresponding federal rules and regulations are adopted; and

**WHEREAS**, continued study of the impact of federal health care reform legislation is necessary so that the state can react to the requirements of the law as the provisions of the law are implemented;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Management continue its study of the impact of federal health care reform legislation on this 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-third Legislative Assembly or, if necessary, to a reconvened or special session of the Sixty-second Legislative Assembly.

Filed April 1, 2011

## CHAPTER 525

### HOUSE CONCURRENT RESOLUTION NO. 3005

(Representatives Monson, Carlson, Drovdal, Vigesaa)  
(Senators Stenehjem, Wardner)

A concurrent resolution recognizing the 25<sup>th</sup> anniversary of the formation of North Dakota's sister state relationship with the Province of Taiwan, Republic of China.

**WHEREAS**, North Dakota has enjoyed a sister state relationship with Taiwan since April 3, 1986; and

**WHEREAS**, the people of this state and of Taiwan have enjoyed a long history of friendly relations and increased international understanding and have benefited from growing commercial and educational interaction between North Dakota and Taiwan; and

**WHEREAS**, in 2009 North Dakota-exported goods to Taiwan were valued at nearly \$4 billion; and

**WHEREAS**, over the last 20 years, the University of North Dakota has educated more than 250 pilots from Taiwan; and

**WHEREAS**, North Dakota has long-standing partnerships with Taiwan, including both states hosting visiting public and private sector representatives to facilitate trade;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-second Legislative Assembly takes pride in recognizing the 25<sup>th</sup> anniversary of the formation of North Dakota's sister state relationship with Taiwan and looks forward to this relationship continuing for years to come; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the President of Taiwan, the Governor of North Dakota, the Speaker of the Taiwan Provincial Consultative Council, the Taipei Economic and Cultural Office in Kansas City, Missouri, and the Executive Director of the North Dakota Trade Office.

Filed March 28, 2011

## CHAPTER 526

### HOUSE CONCURRENT RESOLUTION NO. 3006

(Representative R. Kelsch)  
(Senator Dever)

A concurrent resolution designating House and Senate employment positions and fixing compensation.

#### **BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That for the Sixty-second 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	\$161
Assistant chief clerk	142
Journal reporter	157
Calendar clerk	142
Bill clerk	136
Sergeant-at-arms	126
Administrative assistant to majority leader	148
Staff assistant to majority leader	148
Administrative assistant to minority leader	148
Staff assistant to minority leader	148
Administrative assistant to Speaker	148
Chief committee clerk	148
Appropriations Committee clerk	148
Assistant Appropriations Committee clerk	142
Committee clerk for three-day committee	142
Committee clerk for two-day committee	132
Assistant committee clerk	132
Deputy sergeant-at-arms	104
Chief page and bill book clerk	115
Legislative assistant	98

#### SENATE

Secretary of the Senate	\$161
Assistant secretary of the Senate	142
Journal reporter	157
Calendar clerk	142
Bill clerk	136
Sergeant-at-arms	126
Administrative assistant to majority leader	148
Staff assistant to majority leader	148
Administrative assistant to minority leader	148
Staff assistant to minority leader	148
Chief committee clerk	148
Appropriations Committee clerk	148

Assistant Appropriations Committee clerk	142
Committee clerk for three-day committee	142
Committee clerk for two-day committee	132
Assistant committee clerk	132
Payroll clerk	120
Deputy sergeant-at-arms	104
Chief page and bill book clerk	115
Legislative assistant	98

**BE IT FURTHER RESOLVED**, that each employee of the Sixty-second 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**, 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 19, 2011

## CHAPTER 527

### HOUSE CONCURRENT RESOLUTION NO. 3007

(Representatives Amerman, J. Kelsh)  
(Senator Dotzenrod)

A concurrent resolution directing the Legislative Management to study eminent domain laws as they relate to pipeline siting.

**WHEREAS**, pipelines may be built across multiple states, including this state, without a direct benefit to the people of this state; and

**WHEREAS**, the eminent domain laws of this state may be used against property owners in this state to locate a pipeline on their property without their consent; and

**WHEREAS**, the property taken by eminent domain may be taken without consideration for the surrounding property and future uses of the property; and

**WHEREAS**, the burden is on the property owner to defend against eminent domain for which the property owner incurs legal fees and costs;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Management study eminent domain laws as they relate to pipeline siting; 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-third Legislative Assembly.

Filed March 28, 2011

## CHAPTER 528

### HOUSE CONCURRENT RESOLUTION NO. 3008

(Representatives DeKrey, Kempenich, Skarphol)  
(Senators Christmann, Wardner, O'Connell)

A concurrent resolution urging Congress to clearly delegate responsibility for the regulation of hydraulic fracturing to the states.

**WHEREAS**, hydraulic fracturing, a mechanical method of increasing the permeability of rock, thus increasing the amount of oil or gas produced from the rock, has greatly enhanced oil and gas production in North Dakota; and

**WHEREAS**, oil and gas production increases in North Dakota have led to growth in employment and economic development as well as promotion of energy independence for the United States; and

**WHEREAS**, the state of North Dakota, through the Oil and Gas Division of the Department of Mineral Resources, has proven more than capable of regulating oil and gas recovery processes and ensuring the safety of workers while protecting the environment; and

**WHEREAS**, the state, through the Oil and Gas Division of the Department of Mineral Resources, is best situated to closely monitor oil and gas drilling and fracturing operations to ensure they are conducted in an environmentally sound manner;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-second Legislative Assembly urges the Congress of the United States to clearly delegate responsibility for the regulation of hydraulic fracturing to the states; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the administrator of the Environmental Protection Agency and to each member of the North Dakota Congressional Delegation.

Filed March 28, 2011

## CHAPTER 529

### HOUSE CONCURRENT RESOLUTION NO. 3010

(Representatives Kroeber, Hanson, Keiser, Mueller)  
(Senators Wardner, Robinson)

A concurrent resolution directing the Legislative Management to study passenger rail service within the state, including options for the implementation of a passenger rail service route in the southern part of the state.

**WHEREAS**, the cost of transportation by automobile is unpredictable due to the volatility in the price of petroleum products; and

**WHEREAS**, passenger rail provides a more fuel-efficient and cleaner transportation system; and

**WHEREAS**, passenger rail service is important for citizens who have limited public transportation options; and

**WHEREAS**, the North Coast Hiawatha passenger rail route ceased operation through southern North Dakota in 1979; and

**WHEREAS**, the federal Passenger Rail Investment and Improvement Act of 2008 provided for a federal study of the feasibility of reinstating the North Coast Hiawatha passenger rail route; and

**WHEREAS**, this state is a member of the Midwest Interstate Passenger Rail Compact, the purpose of which is to promote passenger rail service in the Midwest;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Management study passenger rail service in the state, including options for implementing passenger rail service in the southern part 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-third Legislative Assembly.

Filed March 28, 2011

## CHAPTER 530

### HOUSE CONCURRENT RESOLUTION NO. 3011

(Representatives Klemin, Kretschmar)  
(Senators Hogue, Nething)

A concurrent resolution directing the Legislative Management to continue its study of the feasibility and desirability of adopting the Revised Uniform Limited Liability Company Act.

**WHEREAS**, in 2006 the National Conference of Commissioners on Uniform State Laws approved and recommended for enactment in all states the Revised Uniform Limited Liability Company Act, which revises the Uniform Limited Liability Company Act; and

**WHEREAS**, historically, North Dakota's business entity laws have been drafted with the cooperation and input of interested persons, including the Secretary of State, and have taken into account the business entity laws of Minnesota; and

**WHEREAS**, the North Dakota Commission on Uniform State Laws supports introduction of the Revised Uniform Limited Liability Company Act; and

**WHEREAS**, during the 2009-10 interim, the Legislative Management's interim Judiciary Committee studied the feasibility and desirability of adopting the Revised Uniform Limited Liability Company Act; and

**WHEREAS**, in its study of the Revised Uniform Limited Liability Company Act, the interim Judiciary Committee received information that due to implementation concerns that the revised Act has raised in various states, the National Conference considered revisions to the Act during its summer 2010 meeting, with final approval of those revisions scheduled for the summer of 2011; and

**WHEREAS**, based upon recommendations of the State Bar Association of North Dakota and the Secretary of State, the interim Judiciary Committee recommended the continuation of the study of the Revised Uniform Limited Liability Company Act during the 2011-12 interim;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Management continue its study of the feasibility and desirability of adopting the Revised Uniform Limited Liability Company Act; 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-third Legislative Assembly.

Filed April 6, 2011



## CHAPTER 531

### HOUSE CONCURRENT RESOLUTION NO. 3013

(Representatives Kasper, Headland, Ruby, Thoreson, Wrangham)  
(Senator Hogue)

A concurrent resolution to recognize February 6, 2011, as "Ronald Reagan Day" in North Dakota.

**WHEREAS**, President Ronald Wilson Reagan, a man of humble background, worked throughout his life serving freedom and advancing the public good, having been employed as an entertainer, union leader, corporate spokesman, Governor of California and President of the United States; and

**WHEREAS**, Ronald Reagan served with honor and distinction for two terms as the 40<sup>th</sup> president of the United States of America, the second of which he earned the confidence of 3/5 of the electorate and was victorious in 49 of the 50 states in the general election--a record unsurpassed in the history of American presidential elections; and

**WHEREAS**, in 1981, when Ronald Reagan was inaugurated President, he inherited a disillusioned nation shackled by rampant inflation and high unemployment; and

**WHEREAS**, during Mr. Reagan's presidency he worked in a bipartisan manner to enact his bold agenda of restoring accountability and common sense to government, which led to an unprecedented economic expansion and opportunity for millions of Americans; and

**WHEREAS**, President Reagan's commitment to an active social policy agenda for the nation's children helped lower crime and drug use in our neighborhoods; and

**WHEREAS**, President Reagan's commitment to our armed forces contributed to the restoration of pride in America, her values and those cherished by the free world, and prepared America's armed forces to meet 21<sup>st</sup> century challenges; and

**WHEREAS**, President Reagan's vision of "peace through strength" led to the end of the Cold War and the ultimate demise of the Soviet Union, guaranteeing basic human rights for millions of people; and

**WHEREAS**, February 6, 2011, will be the 100<sup>th</sup> anniversary of Ronald Reagan's birth;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-second Legislative Assembly declares February 6, 2011, to be "Ronald Reagan Day" in North Dakota; and

**BE IT FURTHER RESOLVED**, that all citizens of the state of North Dakota are urged to take cognizance of this event and to participate fittingly in its observance.

Filed February 4, 2011

## CHAPTER 532

### HOUSE CONCURRENT RESOLUTION NO. 3015

(Representatives Kasper, Headland, Keiser, Thoreson, Weiler)  
(Senator Wardner)

A concurrent resolution reaffirming North Dakota's sovereignty under the 10<sup>th</sup> Amendment to the Constitution of the United States and to demand the federal government halt its practice of assuming powers and imposing mandates on the states for purposes not enumerated in the Constitution of the United States.

**WHEREAS**, the 10<sup>th</sup> Amendment to the Constitution of the United States reads as follows: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people"; and

**WHEREAS**, the 10<sup>th</sup> Amendment defines the total scope of federal power as being that specifically granted by the Constitution of the United States and no more; and

**WHEREAS**, the scope of power defined by the 10<sup>th</sup> Amendment means that the federal government was created by the states and the powers of the federal government are limited and enumerated; and

**WHEREAS**, in 2011 the states are demonstrably treated as agents of the federal government; and

**WHEREAS**, many federal laws are directly in violation of the 10<sup>th</sup> Amendment to the Constitution of the United States; and

**WHEREAS**, the 10<sup>th</sup> Amendment assures that we, the people of the United States of America and each sovereign state in the Union of States, now have, and have always had, rights the federal government may not usurp; and

**WHEREAS**, the United States Supreme Court ruled in *New York v. United States*, 112 S. Ct. 2408 (1992) that Congress may not simply commandeer the legislative and regulatory processes of the states; and

**WHEREAS**, a number of proposals from previous administrations and some now pending from the present administration and from Congress may further violate the Constitution of the United States; and

**WHEREAS**, the Sixty-first Legislative Assembly affirmed this state's sovereignty under the 10<sup>th</sup> Amendment to the Constitution of the United States;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-second Legislative Assembly reaffirms this state's sovereignty under the 10<sup>th</sup> Amendment to the Constitution of the United States over all powers not otherwise enumerated and granted to the federal government by the Constitution of the United States and continues its demand that the federal government halt its practice of assuming powers and imposing mandates upon the states for purposes not enumerated in the Constitution of the United States; and

**BE IT FURTHER RESOLVED**, that this resolution serves as notice and demand to the federal government to cease and desist, effective immediately, mandates that are beyond the scope of constitutionally delegated powers; and

**BE IT FURTHER RESOLVED**, that all compulsory federal legislation that directs states to comply under threat of civil or criminal penalties or sanctions or requires states to pass legislation or lose federal funding be prohibited or repealed; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the President of the United States, each justice of the Supreme Court of the United States, each judge in the United States Court of Appeals for the Eighth Circuit, the President of the United States Senate, the Speaker of the United States House of Representatives, and to each member of the North Dakota Congressional Delegation.

Filed April 6, 2011

## CHAPTER 533

### HOUSE CONCURRENT RESOLUTION NO. 3016

(Representatives Kasper, Headland, Kempenich, Sukut, Weiler)  
(Senator Klein)

A concurrent resolution urging Congress to repeal the Patient Protection and Affordable Care Act.

**WHEREAS**, the United States Congress passed and the President signed into law the Patient Protection and Affordable Care Act on March 23, 2010; and

**WHEREAS**, the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010, comprises comprehensive federal health care reform legislation, which is commonly referred to as the Affordable Care Act; and

**WHEREAS**, this law is likely to increase health care costs, raise taxes, negatively affect senior citizens, reduce the quality of care that Americans will receive, limit consumer choice in accessing private health insurance, and may reduce the ability of American companies to compete; and

**WHEREAS**, the law may constrain the freedom of individuals to choose their own doctor and may interfere with individuals' ability to make personal health care decisions; and

**WHEREAS**, a government-controlled health care system is likely to increase spending for health care and result in the risk of policymakers rationing care as a cost-containment measure; and

**WHEREAS**, according to the Congressional Budget Office, the law could cause millions of Americans who receive health insurance through their employer to lose their health insurance coverage and also result in premiums in the individual and small group markets to substantially increase; and

**WHEREAS**, the United States Department of Health and Human Services will dictate what benefits insurers must offer and how much to charge; and

**WHEREAS**, because reimbursement for health care providers treating patients on Medicare and Medicaid is often less than the cost of providing the care, additional reductions in Medicare and Medicaid reimbursement may further contribute to health care provider shortages; and

**WHEREAS**, the law will increase taxes on employers who do not offer adequate insurance and will increase taxes on investment income, which in turn will reduce capital available for job expansion, reduce economic growth, and result in fewer jobs for Americans; and

**WHEREAS**, the law may harm seniors by making cuts from the Medicare budget and causing seniors to lose the health insurance coverage they currently possess; and

**WHEREAS**, the provisions of the law will add to the national debt; and

**WHEREAS**, the provisions of the law aimed at reducing health care spending address the symptoms of the cost of health care rather than the root causes of growth in health care spending;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-second Legislative Assembly urges Congress to repeal the Patient Protection and Affordable Care Act; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to each member of the North Dakota Congressional Delegation.

Filed April 20, 2011

## CHAPTER 534

### HOUSE CONCURRENT RESOLUTION NO. 3019

(Representatives Schmidt, Carlson, Hofstad, Porter)  
(Senators Schaible, Stenehjem)

A concurrent resolution urging the United States Army Corps of Engineers to immediately cease wrongful denial of access and wrongful requirement of payment for the natural flows of the Missouri River.

**WHEREAS**, the Pick-Sloan Project, as authorized in the Flood Control Act of 1944, as amended, provides major flood control benefits, recreational benefits, water supply benefits, hydropower benefits, and navigational benefits for the downstream states of Iowa, Nebraska, Missouri, and Kansas through construction of large reservoirs in the state's lying upstream from these states; and

**WHEREAS**, the Pick-Sloan Project reservoirs have been in place for many years, thus providing downstream states in the Missouri River Basin all the benefits promised in the Pick-Sloan Project; and

**WHEREAS**, the state of North Dakota lost more than 500,000 acres of valuable river bottom lands as a result of construction of the Missouri River reservoirs and the Flood Control Act of 1944, causing an annual loss of millions of dollars in economic gross product and an additional annual loss in personal income as well as other serious impacts to individuals, political subdivisions, and North Dakota's Indian nations; and

**WHEREAS**, the United States Army Corps of Engineers, through the Surplus Water Report, is clearly challenging the state of North Dakota and the upper basin states' rights to access the states' natural flows; and

**WHEREAS**, the Flood Control Act of 1944, as amended in 1958, limits any repayment requirement by any water user for a term not to exceed 50 years; and

**WHEREAS**, in contradiction to the Dakota Water Resources Act of 2000 and the 1958 Water Supply Act, the United States Army Corps of Engineers is forcing reimbursement of nonreimbursable costs by withholding review of future easement applications; and

**WHEREAS**, before the dams were constructed, the Missouri River provided ample water; and

**WHEREAS**, the natural flows of the Missouri River, even during the lowest flow periods, were and continue to be more than plentiful for the needs of North Dakota; and

**WHEREAS**, the natural flows of the Missouri River through Lake Sakakawea and Lake Oahe are not, and should not be, considered stored water; and

**WHEREAS**, any attempt by the United States Army Corps of Engineers to impose a storage fee and deny water users in the state to access the natural flows of the Missouri River is misguided;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-second Legislative Assembly urges the United States Army Corps of Engineers to immediately cease wrongful denial of access and wrongful requirement of payment for the natural flows of the Missouri River; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution by certified mail with return receipt to the President of the United States; the Majority Leader of the United States Senate; the Minority Leader of the United States Senate; the Majority Leader of the United States House of Representatives; the Minority Leader of the United States House of Representatives; the Speaker of the United States House of Representatives; the District Engineer, Omaha District, United States Army Corps of Engineers; the Division Commander of the Northwestern Division of the United States Army Corps of Engineers; the Secretary of the Army; the Secretary of the Interior; the Governor; the Attorney General; each member of the State Water Commission; and each member of the North Dakota Congressional Delegation.

Filed March 28, 2011



## CHAPTER 535

### HOUSE CONCURRENT RESOLUTION NO. 3020

(Representatives Mock, D. Johnson, Gruchalla, Holman, Kroeber)  
(Senator Burckhard)

A concurrent resolution congratulating the North Dakota Highway Patrol on its 75<sup>th</sup> anniversary.

**WHEREAS**, the Highway Patrol was created by the 1935 Legislative Assembly, and in 1936 five Highway Police were appointed by the Highway Patrol superintendent; and

**WHEREAS**, the duty to enforce the provisions of law relating to the protection and use of public highways in this state and the operation of motor vehicles on the highways was expanded to include the enforcement of all criminal laws on highways in 1967; and

**WHEREAS**, the responsibilities of the Highway Patrol were expanded to include the operation of the law enforcement training center in 1971; and

**WHEREAS**, all security duties for the Capitol were placed under the direction of the Highway Patrol in 2005; and

**WHEREAS**, since 1962 the Highway Patrol has provided two troopers to attend the American Legion's North Dakota Boys State as counseling staff; and

**WHEREAS**, the Highway Patrol and the North Dakota Motor Carriers Association are jointly involved in selecting the trooper of the year and the motor carrier driver of the year;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-second Legislative Assembly congratulates the North Dakota Highway Patrol on its 75<sup>th</sup> anniversary; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the Governor, the Superintendent of the Highway Patrol, the state office of the American Legion, and the North Dakota Motor Carriers Association.

Filed March 28, 2011

## CHAPTER 536

### HOUSE CONCURRENT RESOLUTION NO. 3021

(Representatives Heller, Delzer, Kreidt, Wrangham)  
(Senators Christmann, Freborg)

A concurrent resolution urging the Citizen's Stamp Advisory Committee of the United States Postal Service to issue a commemorative stamp honoring coal miners and their contributions to our nation.

**WHEREAS**, our entire nation owes our coal miners a great deal more than we could ever repay them for the difficult and dangerous work which they perform so that the people of this nation can have the fuel we need to operate our industries and to heat our homes; and

**WHEREAS**, coal mining is as much a culture as it is an industry; and

**WHEREAS**, miners sacrifice life and limb with little recognition and it would be proper and fitting for our nation to recognize our coal miners, past and present, for their contributions; and

**WHEREAS**, the coal industry in this state employs over 4,000 workers;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-second Legislative Assembly urges the Citizen's Stamp Advisory Committee of the United States Postal Service to issue a commemorative stamp honoring coal miners and their contributions to our nation; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forwards copies of this resolution to the Citizen's Stamp Advisory Committee, to the presiding officer of each house of Congress, and to each member of the North Dakota Congressional Delegation.

Filed March 28, 2011

## CHAPTER 537

### HOUSE CONCURRENT RESOLUTION NO. 3022

(Representatives Headland, Thoreson, S. Meyer)  
(Senators Burckhard, Christmann, Dotzenrod)

A concurrent resolution urging the Federal Communications Commission to make substantive changes to the National Broadband Plan so that the plan does not limit the future economic livelihood and social well-being of rural consumers.

**WHEREAS**, North Dakotans living in rural areas deserve and expect the same high-quality, affordable communications services that are available to their urban neighbors; and

**WHEREAS**, rural businesses, farmers, and ranchers compete in the global marketplace and depend on affordable access to robust broadband services to market and sell products around the world, similar to businesses in urban areas; and

**WHEREAS**, children living in rural areas should have the same educational opportunities as their urban counterparts and high-speed Internet access is absolutely necessary to allow these students opportunities for advanced learning through distance education; and

**WHEREAS**, residents living in rural areas face unique health care challenges because of the distances that must be traveled to seek basic and advanced medical care and telemedicine, and telehealth delivered via broadband networks can improve the health of rural residents by reducing the time and travel needed for high-quality health care; and

**WHEREAS**, many rural areas encounter significant challenges in pursuing and sustaining economic development plans that bring quality, higher-paying jobs to their communities, and insufficient robust broadband speeds will further hamper the economic development needs of many rural communities; and

**WHEREAS**, the United States Department of Agriculture rightfully has placed significant importance on the need for broadband access in rural America to improve the quality of life and economic development; and

**WHEREAS**, communications providers that serve this state's small towns and rural areas have done an outstanding job of ensuring their consumers have access to affordable, reliable broadband services through the assistance of the federal universal service fund and the United States Department of Agriculture Rural Utilities Service loan and grant programs; and

**WHEREAS**, contrary to the success many small, rural communications providers have had in deploying broadband, the Federal Communications Commission is embarking on a National Broadband Plan that will negatively impact the ability of rural North Dakotans to realize the true benefits of access to robust broadband speeds by

limiting support to four megabits per second in rural, high-cost areas of the country, while calling for 100 million urban homes to have access to broadband speeds at 100 megabits per second by 2020; and

**WHEREAS**, the National Broadband Plan runs counter to the federal policy of universal service which ensures access to comparable communications services at roughly similar costs regardless of the location of the consumer;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-second Legislative Assembly of North Dakota urges the Federal Communications Commission to make substantive changes to the National Broadband Plan so that the plan does not limit the future economic livelihood and social well-being of rural consumers; and

**BE IT FURTHER RESOLVED**, that the Sixty-second Legislative Assembly of North Dakota encourages the North Dakota Congressional Delegation to work with the Federal Communications Commission to ensure the understanding of the importance of a robust broadband development to rural North Dakota and how the current draft of the National Broadband Plan needs to be dramatically altered to ensure quality broadband services availability throughout this state; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the Federal Communications Commission and to each member of the North Dakota Congressional Delegation.

Filed March 28, 2011

## CHAPTER 538

### HOUSE CONCURRENT RESOLUTION NO. 3024

(Representatives Pollert, Brandenburg, D. Johnson)  
(Senators Klein, O'Connell)

A concurrent resolution congratulating the North Dakota Grain Dealers Association as it celebrates 100 years of existence.

**WHEREAS**, grain production has been an integral part of North Dakota's history and continues to be an integral part of the state's economy; and

**WHEREAS**, the bountiful grain harvests of this state move through elevators, large and small, that have stood and continue to stand as proud hallmarks of our great agricultural traditions; and

**WHEREAS**, the North Dakota Grain Dealers Association, and its predecessor, the Farmers' Grain Dealers Association of North Dakota, have through their voluntary membership represented the interests of this state's grain elevators in legislative and regulatory settings; and

**WHEREAS**, the North Dakota Grain Dealers Association continues to represent and promote the interests of grain elevators through safety inspections, employee training, bonding and insurance services, publications, education, and convention and industry trade shows; and

**WHEREAS**, the North Dakota Grain Dealers Association, through its educational foundation, makes available scholarships and grants to students who are interested in pursuing careers in agriculture and supports agricultural programs at schools and institutions of higher education throughout this state; and

**WHEREAS**, the North Dakota Grain Dealers Association will celebrate 100 years of existence on May 23, 2011;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Assembly of North Dakota takes great pride in offering its sincerest congratulations to the North Dakota Grain Dealers Association as it celebrates 100 years of existence; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the Governor, the Agriculture Commissioner, each public service commissioner, and the president of the North Dakota Grain Dealers Association.

Filed March 28, 2011

## CHAPTER 539

### HOUSE CONCURRENT RESOLUTION NO. 3025

(Representatives D. Johnson, Monson, Delmore)  
(Senators Fischer, Wardner)

A concurrent resolution declaring March 10, 2011, as "Canada Day at the North Dakota Capitol".

**WHEREAS**, Canada and the United States share a rich and vibrant history of democratic governance, military and economic partnerships, and cultural ties; and

**WHEREAS**, Canada is the largest trade partner of the United States, and the number of Canadian tourists visiting this country exceeds the number from any other country; and

**WHEREAS**, more than one-half of all exports from North Dakota go to Canada; and

**WHEREAS**, Canadian visitors to North Dakota contribute approximately \$300 million annually to the North Dakota economy; and

**WHEREAS**, North Dakota and its neighboring Canadian provinces share common industries, including agriculture and energy development; and

**WHEREAS**, since 1932 the International Peace Garden has been a symbol of the friendship between two neighbors that share the world's longest unfortified border;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-second Legislative Assembly declares March 10, 2011, as "Canada Day at the North Dakota Capitol"; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward a copy of this resolution to the Consulate General of Canada.

Filed March 9, 2011

## CHAPTER 540

### HOUSE CONCURRENT RESOLUTION NO. 3026

(Representatives Headland, Belter, Brandenburg)  
(Senators Miller, Uglem, Wanzek)

A concurrent resolution urging Congress to require renegotiation of United States Fish and Wildlife Service wetlands easements.

**WHEREAS**, many United States Fish and Wildlife Service easements were acquired without consideration of the detrimental impact the easement may have on an individual's farming operations; and

**WHEREAS**, the terms of many wetland easements obtained by representatives of the United States Fish and Wildlife Service were not clearly defined; and

**WHEREAS**, many easements are not specifically delineated and have been viewed as covering an entire parcel of property rather than the wetland itself, thus unfairly burdening the farming operations of the property owner; and

**WHEREAS**, if wetlands are to be protected to the extent desired by the United States Fish and Wildlife Service, then large volumes of water in surficial, unconfined aquifers in North Dakota will be prevented from being put to beneficial use; and

**WHEREAS**, the contemporary interpretation of United States Fish and Wildlife Service wetland easements by the service is outside the scope of the original intent of the easement that was to prevent surface drainage of wetlands; and

**WHEREAS**, the United States Fish and Wildlife Service is not following federal court decisions that have been rendered concerning the acquisition of easements by the United States Fish and Wildlife Service; and

**WHEREAS**, the state has incurred legal expenses in forcing the United States Fish and Wildlife Service to delineate wetlands; and

**WHEREAS**, the creation of wetland easements has resulted in lost tax revenues to political subdivisions as well as devaluation of surrounding real estate; and

**WHEREAS**, the ever-changing definition of wetlands by the United States Fish and Wildlife Service has led to uncertainty and the inability of landowners to properly plan for the future in their farming operations; and

**WHEREAS**, termination of existing easements and renegotiation or reacquirement of easements would specifically delineate and protect the wetland and thus enhance both protection of the wetland itself and allow the landowner to better manage the landowner's property;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-second Legislative Assembly urges the Congress of the United States to require renegotiation of United States Fish and Wildlife Service wetlands easements; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the director of the United States Fish and Wildlife Service, the Secretary of the Interior, and to each member of the North Dakota Congressional Delegation.

Filed March 28, 2011



## CHAPTER 541

### HOUSE CONCURRENT RESOLUTION NO. 3028

(Representatives Headland, Grande, Heller)  
(Senators Christmann, Wanzek, Wardner)

A concurrent resolution urging Congress to adopt legislation prohibiting the Environmental Protection Agency by any legal means from regulating greenhouse emissions, including, if necessary, defunding Environmental Protection Agency greenhouse gas regulatory activities; imposing a moratorium on adoption on any new air quality regulations by the Environmental Protection Agency by any legal means, except those regulations directly addressing an imminent health or environmental emergency, for a period of at least two years; and requiring the administration to undertake a study identifying all regulatory activity the Environmental Protection Agency intends to undertake in furtherance of its goal of "taking action on climate change and improving air quality" and specifying the cumulative effect of all these regulations on the economy, jobs, and American economic competitiveness.

**WHEREAS**, the Environmental Protection Agency has proposed or is proposing numerous new regulations, particularly in the area of air quality and regulation of greenhouse gases, that are likely to have major effects on the economy, jobs, and United States competitiveness in worldwide markets; and

**WHEREAS**, the Environmental Protection Agency's regulatory activity as to air quality and greenhouse gases has numerous and overlapping requirements and may have negative consequences on the economy; and

**WHEREAS**, concern is growing that, with cap and trade legislation having failed in Congress, the Environmental Protection Agency is attempting to obtain the same results through the adoption of regulations; and

**WHEREAS**, Environmental Protection Agency overregulation is driving jobs and industry out of the United States; and

**WHEREAS**, neither the Environmental Protection Agency nor the administration has undertaken any comprehensive study of what the cumulative effect of all of this new regulatory activity will have on the economy, jobs, and competitiveness; and

**WHEREAS**, the Environmental Protection Agency has not performed any comprehensive study of what the environmental benefits of its greenhouse gas regulation will be in terms of impacts on the global climate; and

**WHEREAS**, state agencies are routinely required to identify the costs of their regulations and to justify those costs in light of the benefits; and

**WHEREAS**, since the Environmental Protection Agency has identified "taking action on climate change and improving air quality" as its first strategic goal for the 2011-15 time period, the Environmental Protection Agency should be required to

identify the specific actions it intends to take to achieve these goals and to assess the total cost of all these actions together; and

**WHEREAS**, the Legislative Assembly supports continuing improvement in the quality of the nation's air and believes that such improvement can be made in a sensible fashion without damaging the economy, provided there is a full understanding of the cost of the regulations at issue; and

**WHEREAS**, the primary goal of government at the present time must be to promote economic recovery and to foster a stable and predictable business environment that will lead to the creation of jobs; and

**WHEREAS**, public health and welfare will suffer without significant new job creation and economic improvement because people with good jobs are better able to take care of themselves and their families than the unemployed and because environmental improvement is only possible in a society that generates wealth;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-second Legislative Assembly urges Congress to adopt legislation prohibiting the Environmental Protection Agency by any legal means from regulating greenhouse emissions, including, if necessary, defunding Environmental Protection Agency greenhouse gas regulatory activities; imposing a moratorium on adoption on any new air quality regulations by the Environmental Protection Agency by any means necessary, except those directly addressing an imminent health or environmental emergency, for a period of at least two years; and requiring the administration to undertake a study identifying all regulatory activity that the Environmental Protection Agency intends to undertake in furtherance of its goal of "taking action on climate change and improving air quality" and specifying the cumulative effect of all these regulations on the economy, jobs, and American economic competitiveness; and

**BE IT FURTHER RESOLVED**, that this study be a multiagency study drawing on the expertise of the Environmental Protection Agency and of agencies and departments having expertise and responsibility for the economy and the electric system and should provide an objective cost-benefit analysis of all of the Environmental Protection Agency's current and planned regulation together; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the President of the United States, the Majority Leader of the United States Senate, the Minority Leader of the United States Senate, the Majority Leader of the United States House of Representatives, the Minority Leader of the United States House of Representatives, the Speaker of the United States House of Representatives, the administrator of the Environmental Protection Agency, the director of the federal Office of Management and Budget, and to each member of the North Dakota Congressional Delegation.

Filed March 28, 2011

## CHAPTER 542

### HOUSE CONCURRENT RESOLUTION NO. 3029

(Representatives Weiler, Carlson, Vigesaa, J. Kelsh)  
(Senators Stenehjem, Taylor)

A concurrent resolution declaring Monday, February 14, 2011, "North Dakota Close-Up Day".

**WHEREAS**, the North Dakota Close-Up program is designed to ignite interest in the democratic process and instill in young people the desire to become active participants in their government; and

**WHEREAS**, the North Dakota Close-Up program concentrates on the functions and structures of state government and defines constitutional responsibilities assigned to each of the three branches of government; and

**WHEREAS**, the focus of the 2011 North Dakota Close-Up program is the legislative branch of government; and

**WHEREAS**, the North Dakota Close-Up program has been in existence for 26 years; and

**WHEREAS**, it is anticipated that approximately 100 North Dakota high school students will participate in the 2011 North Dakota Close-Up program;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-second Legislative Assembly declares Monday, February 14, 2011, "North Dakota Close-Up Day"; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the North Dakota Council of Educational Leaders.

Filed March 14, 2011

## CHAPTER 543

### HOUSE CONCURRENT RESOLUTION NO. 3030

(Representatives Headland, Owens, S. Meyer)  
(Senators Cook, Miller, Triplett)

A concurrent resolution directing the Legislative Management to study the feasibility and desirability of requiring use of cigarette tax stamps.

**WHEREAS**, North Dakota is one of only three states that do not require tax stamps on cigarettes; and

**WHEREAS**, a study of the feasibility and desirability of requiring tax stamping on cigarettes will allow consideration of the benefits and detriments of requiring cigarette tax stamps on the state, wholesalers, the public, and administrative and law enforcement agencies;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Management study the feasibility and desirability of requiring use of cigarette tax stamps; 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-third Legislative Assembly.

Filed March 28, 2011

## CHAPTER 544

### HOUSE CONCURRENT RESOLUTION NO. 3031

(Representatives Heller, Headland, Kreidt)  
(Senators Christmann, Freborg, Lyson)

A concurrent resolution expressing the concern of the Legislative Assembly with the scope, justification, and substances of the Office of Surface Mining Reclamation and Enforcement's stream protection rule.

**WHEREAS**, the state's coal mining industry has a long history of protecting streams, watersheds, and the waters of North Dakota and often receives praise for its mining practices and environmental stewardship to the lands of North Dakota; and

**WHEREAS**, from 2003 through 2008, the Office of Surface Mining Reclamation and Enforcement conducted a five-year process, including public hearings, submission of thousands of public comments, and preparation of an environmental impact statement, that culminated in final regulations adding significant new environmental protections regarding the placement of excess spoil and clarifying its regulations relating to stream buffer zones pursuant to the Surface Mining Control and Reclamation Act; and

**WHEREAS**, the Office of Surface Mining Reclamation and Enforcement's 2008 regulations were consistent with a final decision from the Fourth Circuit Court of Appeals in *Kentuckians for the Commonwealth v. Rivenburth*, holding that it is "beyond dispute that the Surface Mining Control and Reclamation Act recognizes the possibility of placing excess spoil and material in waters of the United States even though those materials do not have a beneficial purpose" and such regulations helped to significantly reduce regulatory uncertainty brought on by earlier litigation questioning the meaning of the agency's stream buffer zone rule; and

**WHEREAS**, a federal court ruled that the Secretary of the Interior may not repeal the stream buffer zone rule without going through a rulemaking process, including public notice and comment as required under the Administrative Procedure Act; and

**WHEREAS**, on June 11, 2009, the Secretary of the Interior, along with the United States Army Corps of Engineers and the Environmental Protection Agency, signed a memorandum of understanding implementing an "interagency action plan" designed to "significantly reduce the harmful environmental consequences of Appalachian surface coal mining operations . . ." and suggested that coal mining jobs that will be sacrificed in this state should be replaced with "green" jobs promoted by the memorandum of understanding; and the Office of Surface Mining, Reclamation and Enforcement further committed in the memorandum of understanding to consider revisions to the 2008 stream buffer zone rule; and

**WHEREAS**, the Office of Surface Mining Reclamation and Enforcement has failed to justify why a new "stream protection rule" is necessary or explain the problem that the agency is attempting to fix, and such concerns have been echoed by the

Interstate Mining Compact Commission--an organization representing state mining regulators with substantial expertise in Surface Mining Control and Reclamation Act regulation; and

**WHEREAS**, the Office of Surface Mining Reclamation and Enforcement is inappropriately rushing to complete the rulemaking because the agency has committed to a self-imposed deadline of February 28, 2011, to publish a proposed rule through a unilateral settlement agreement with environmental groups and, in attempting to meet this artificial deadline, is committing flagrant violations of the required National Environmental Policy Act process; and

**WHEREAS**, the agency has also limited comment and participation by other members of the public by refusing to extend the comment period on its advanced notice of proposed rulemaking, by failing to adequately provide sufficient notice of the alternatives being considered, and by conducting "listening sessions" where the Office of Surface Mining Reclamation and Enforcement prohibited any public speaking by those concerned about the rule; and

**WHEREAS**, the proposed actions could sterilize several million tons of North Dakota lignite coal that would otherwise be minable under the current regulations that have been proven more than adequate to protect streams in North Dakota; and

**WHEREAS**, the coal mining industry is critical to the economic and social well-being of the citizens of North Dakota, accounting for over 27,000 direct and indirect jobs averaging over \$74,000 in compensation, over \$93 million in state taxes, and adding \$2.9 billion to the gross domestic product of the state;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-second Legislative Assembly expresses its serious concern with the scope, justification, and substance of the Office of Surface Mining Reclamation and Enforcement's stream protection rule; and

**BE IT FURTHER RESOLVED**, that the Sixty-second Legislative Assembly expresses its concern with the procedure and process that the Office of Surface Mining Reclamation and Enforcement has been using to implement such regulation and calls upon the agency to immediately suspend work on the environmental impact statement and the regulation until such time as the agency clearly and publicly articulates why the 2008 regulation has not been implemented and provides specific details regarding each of its provisions and why the agency believes that they are insufficient; provides scientific data and other objective information to justify each and every provision of the new proposal; explains why the agency is contradicting its own annual state inspection reports, which indicate good environmental performance and refute the need for this new regulation; and justifies why a more limited approach would not achieve the objectives of the agency; and

**BE IT FURTHER RESOLVED**, that the Sixty-second Legislative Assembly calls upon the North Dakota Congressional Delegation and the Governor to oppose this unwarranted effort by the administration by withholding any further funding for the Office of Surface Mining Reclamation and Enforcement for the stream protection rule

and environmental impact statement until such time as the agency justifies the need for the new rule; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the President of the United States, the United States Secretary of the Interior, the director of Surface Mining and Reclamation and Enforcement, the Governor of North Dakota, the North Dakota Public Service Commission, and each member of the North Dakota Congressional Delegation.

Filed April 1, 2011

## CHAPTER 545

### HOUSE CONCURRENT RESOLUTION NO. 3032

(Representatives Weiler, Weisz, Onstad)  
(Senators Freborg, Lyson, Warner)

A concurrent resolution directing the Legislative Management to study the needs of, economic values of, and methods to improve access roadways to recreational, tourist, and historical sites in North Dakota.

**WHEREAS**, the income and available funding through the special road fund created under North Dakota Century Code Section 24-02-37 is inadequate to meet the local and statewide needs to improve access roadways to recreational, tourist, and historical sites; and

**WHEREAS**, many existing access roadways are in a significant state of disrepair and are in need of improvement--the condition typically relating to limited maintenance, inadequate base materials and surfacing, narrow widths, and noncompliance with safety standards; and

**WHEREAS**, county and township funding is inadequate and severely stressed due to other priority projects and needs, limiting local governments' ability to make the necessary investment to improve these access roadways; and

**WHEREAS**, access roadways to recreational, tourist, and historical sites represent a local and statewide value, as well as a substantial opportunity, as improvements will lead to increased use resulting in added value and income to the local and state economies; and

**WHEREAS**, the projected population increases in this state, related to the expanding energy industry and overall economic growth, will result in an increasing demand for recreational opportunities; and

**WHEREAS**, the condition, use, need, and value of each access roadway varies; therefore, alternatives related to roadway surfacing, construction methodologies, and lifecycle costs should be evaluated to determine which are most applicable to the various locations;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Management study the needs of, economic values of, and methods to improve access roadways to recreational, tourist, and historical sites in North Dakota; and

**BE IT FURTHER RESOLVED**, that this study focus on designated or named public or privately developed recreational areas, potential funding requirements through the special road fund or other appropriate funding method for the identified



access roadway improvements, and the ability of the local governmental entities to operate and maintain these improvements when completed; 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-third Legislative Assembly.

Filed March 28, 2011

## CHAPTER 546

### HOUSE CONCURRENT RESOLUTION NO. 3034

(Representatives Nathe, Dosch)  
(Senator Kilzer)

A concurrent resolution recognizing the local and international work of the North Dakota-founded and based charity--The GOD'S CHILD Project--and congratulating this North Dakotan humanitarian effort on its 20<sup>th</sup> anniversary.

**WHEREAS**, The GOD'S CHILD Project, which was established in 1991 by Bismarck native Patrick Atkinson, continues to maintain its worldwide headquarters in Bismarck, North Dakota; and

**WHEREAS**, during the past 20 years, The GOD'S CHILD Project has become an internationally recognized humanitarian charitable leader with operating programs in the United States, Guatemala, El Salvador, India, and Malawi, which combined have raised and educated 18,000 orphaned and abandoned children over the past two decades and have assisted tens of thousands of women and their dependents to break free from poverty through education, health care, legal assistance, international country-specific legislative action, human rights protection and defense, and community development; and

**WHEREAS**, The GOD'S CHILD Project's Bismarck-based subprogram--the "Institute for Trafficked, Exploited & Missing Persons"--is widely recognized as a foremost national leader in the public education, prevention, detection, interdiction, rescue, and rehabilitation of human trafficking victims, and is considered to be the largest nongovernmental anti-human trafficking program in Central America; and

**WHEREAS**, The GOD'S CHILD Project is often the first responder during emergency situations here in North Dakota and around the world, especially in Central America, and over the years has assisted life-threatened victims of Hurricane Mitch, Tropical Storm Stan, Hurricane Katrina, earthquake disasters in Haiti and across Central America, the 2005 famine in Malawi and Mozambique, Missouri River flooding, and Cass County and Lake Sakakawea area tornadoes; in each situation successfully and swiftly developing and channeling North Dakotan, national, and international assistance from a vast cross section of schools, churches, communities, and existing donors and benefactors toward successfully providing tens of thousands of victims with immediate emergency assistance; and

**WHEREAS**, The GOD'S CHILD Project provides positive and structured international volunteer experiences for 2,500 individuals and 45 home-building groups each year; and

**WHEREAS**, The GOD'S CHILD Project and its founder and chief executive officer--Bismarck native Patrick Atkinson--have received vast news coverage from outlets such as CNN, Fox News, ABC Primetime, ABC 20/20, USA Today, and nearly 200 international recognitions for its worldwide efforts, including the Guatemalan

Congressional Medal of Honor, Goodwill Ambassador for Peace for the nation of Guatemala, Knighthood from the Spanish Legion, and, more recently, the 2010 Humanitarian Award from the Bismarck City Human Rights Commission, in each case bringing pride and honor to the great state of North Dakota and upon its citizenry;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-second Legislative Assembly recognizes The GOD'S CHILD Project for its international humanitarian efforts and congratulates The GOD'S CHILD Project in this year of its 20<sup>th</sup> anniversary; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the Governor of North Dakota and to The GOD'S CHILD Project.

Filed March 28, 2011

## CHAPTER 547

### HOUSE CONCURRENT RESOLUTION NO. 3036

(Representatives Klemin, Boehning, Delmore)  
(Senators Hogue, Nething, Olafson)

A concurrent resolution directing the Legislative Management to study the trial by jury rights of a person charged with the commission of a misdemeanor, including the extent to which jury trials are conducted in the state for cases involving misdemeanor offenses; the costs of jury trials for misdemeanor offenses; the feasibility and desirability of eliminating the sentencing option of imprisonment for Class B misdemeanors; a review of the jury trial process of other states; and the right to a jury trial in civil traffic cases.

**WHEREAS**, Section 13 of Article I of the Constitution of North Dakota provides "[t]he right of trial by jury shall be secured to all, and remain inviolate"; and

**WHEREAS**, Section 13 of Article I of the Constitution of North Dakota also provides a person accused of a crime for which the person may be confined for a period of more than one year has the right of trial by a jury of 12; and

**WHEREAS**, North Dakota Century Code Section 29-01-06 provides in all criminal prosecutions, the party accused has the right to a speedy and public trial by an impartial jury; and

**WHEREAS**, the North Dakota Rules of Criminal Procedure provide if the defendant is entitled to a jury trial, the trial must be by jury unless the defendant waives a jury trial in writing or in open court, the prosecuting attorney consents, and the court approves; and

**WHEREAS**, the North Dakota Supreme Court has found a constitutional right to a jury trial in civil traffic cases; and

**WHEREAS**, in 2009 and 2010 approximately 118 misdemeanor jury trials were held each year in the state; and

**WHEREAS**, the annual cost of jury compensation for misdemeanor trials in the state is approximately \$35,000 plus mileage reimbursements;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Management study the trial by jury rights of a person charged with the commission of a misdemeanor, including the extent to which jury trials are conducted in the state for cases involving misdemeanor offenses; the costs of jury trials for misdemeanor offenses; the feasibility and desirability of eliminating the sentencing option of imprisonment for Class B misdemeanors; a review of the jury

trial process of other states; and the feasibility and desirability of eliminating a jury trial right for civil traffic tickets; 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-third Legislative Assembly.

Filed April 12, 2011

## CHAPTER 548

### HOUSE CONCURRENT RESOLUTION NO. 3037

(Representatives Delmore, DeKrey, Vigesaa)  
(Senators Lyson, Nelson, Nething)

A concurrent resolution directing the Legislative Management to study the statutes throughout the North Dakota Century Code which grant immunity from civil or criminal liability for performing certain functions.

**WHEREAS**, immunity from liability generally means a person is not subject to criminal or civil liability if the circumstances of the person's actions meet the requirements of a particular statute that grants immunity; and

**WHEREAS**, the North Dakota Century Code contains more than 90 statutes granting civil or criminal immunity for the actions of various organizations, employees, occupations, professions, and volunteers; and

**WHEREAS**, for seemingly similar functions, there is inconsistency in the language that is used in the statutes granting immunity; and

**WHEREAS**, a study of the immunity statutes may provide clarity and consistency among the immunity statutes;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Management study the statutes throughout the North Dakota Century Code which grant immunity from civil or criminal liability for performing certain functions; 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-third Legislative Assembly.

Filed April 12, 2011

## CHAPTER 549

### HOUSE CONCURRENT RESOLUTION NO. 3038

(Representatives Owens, Ruby, Weiler, Weisz)  
(Senator Laffen)

A concurrent resolution directing the Legislative Management to study transportation funding options.

**WHEREAS**, the federal highway trust fund has experienced a shortfall over the past five years; and

**WHEREAS**, the most recent Transportation Equity Act--known as SAFETEA-LU--expired on September 30, 2009; and

**WHEREAS**, this Act as been continued by resolution six times with the current continuation set to expire on March 4, 2011; and

**WHEREAS**, because of the continued growth in sales of hybrid and electric vehicles and the use of other more fuel-efficient vehicles, the current gasoline and diesel fuel tax collection system has realized a decline over the past five years; and

**WHEREAS**, the vehicle miles traveled have increased annually and are expected to continue to increase; and

**WHEREAS**, with more miles traveled and less fuel tax receipts collected, this state needs to investigate other forms of funding, including a vehicle mile tax, sales tax, excise value tax, and public and private partnerships;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Management study transportation funding options; 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-third Legislative Assembly.

Filed April 6, 2011

## CHAPTER 550

### HOUSE CONCURRENT RESOLUTION NO. 3039

(Representatives DeKrey, Carlson, Drovdal, J. Kelsh)  
(Senators Stenehjem, Taylor)

A concurrent resolution urging the United States Fish and Wildlife Service and the Federal Emergency Management Agency to exempt road grade raises necessitated by flooding from the requirement that the raise be offset by the acquisition of replacement wetlands.

**WHEREAS**, the current wet cycle has resulted in flooding of roads necessitating grade raises to maintain the state's transportation network; and

**WHEREAS**, local transportation budgets are already stretched due to continued flooding; and

**WHEREAS**, North Dakota has done more than its share to preserve and protect wetlands; and

**WHEREAS**, the United States Fish and Wildlife Service is requiring remote wetland acquisitions for grade raises that have not resulted in any loss of wetlands;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-second Legislative Assembly urges the United States Fish and Wildlife Service and the Federal Emergency Management Agency to exempt road grade raises necessitated by flooding from the requirement that the raise be offset by the acquisition of replacement wetlands; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the director of the United States Fish and Wildlife Service, the administrator of the Federal Emergency Management Agency, and to each member of the North Dakota Congressional Delegation.

Filed April 12, 2011



## CHAPTER 551

### HOUSE CONCURRENT RESOLUTION NO. 3040

(Representatives D. Johnson, Hofstad, Vigesaa)

(Senator Oehlke)

( Approved by the Delayed Bills Committee)

A concurrent resolution urging the Secretary of the United States Department of Agriculture to change prevented planting provisions in crop insurance policies for the purpose of providing compensation to producers affected by Devils Lake flooding.

**WHEREAS**, Devils Lake flooding, which began 18 years ago, has inundated more than 200,000 acres of highly productive farmland; and

**WHEREAS**, the economic loss from crop production alone is estimated to be millions of dollars each year; and

**WHEREAS**, agriculture is the main income generator in the Devils Lake region; and

**WHEREAS**, the economic loss suffered by agricultural producers as a result of Devils Lake flooding is creating financial stress not only in the agricultural sector but in the communities surrounding Devils Lake; and

**WHEREAS**, agricultural landowners, by storing Devils Lake floodwaters, have helped to significantly reduce the impact of the inundation on others; and

**WHEREAS**, agricultural landowners have not been compensated for storing Devils Lake floodwaters; and

**WHEREAS**, the United States Department of Agriculture's Risk Management Agency could work with the Federal Crop Insurance Corporation to amend prevented planting rules, thereby providing compensation and economic relief to landowners who once again will not be able to engage in agricultural activities on their land;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-second Legislative Assembly urges the Secretary of the United States Department of Agriculture to work with the Risk Management Agency and the Federal Crop Insurance Corporation to immediately pursue changes to prevented planting provisions in crop insurance policies for the purpose of providing compensation to producers affected by Devils Lake flooding; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the Secretary of the United States Department of Agriculture, the administrator of the Risk Management Agency, the board of directors of the Federal

Crop Insurance Corporation, and to each member of the North Dakota Congressional Delegation.

Filed March 28, 2011

## CHAPTER 552

### HOUSE CONCURRENT RESOLUTION NO. 3043

(Representative Kretschmar)

A concurrent resolution directing the Legislative Management to study the filling of vacancies in the Legislative Assembly.

**WHEREAS**, Section 11 of Article IV of the Constitution of North Dakota authorizes the Legislative Assembly to provide by law a procedure to fill vacancies occurring in either house of the Legislative Assembly; and

**WHEREAS**, in 2001 and 2003 the Legislative Assembly revised the procedures for filling vacancies in legislative offices; and

**WHEREAS**, vacancies in the Legislative Assembly are now filled by political party officials who select individuals to fill vacancies and the qualified electors of legislative districts may subsequently petition for special elections to fill the vacancies; and

**WHEREAS**, the current procedures for filling legislative vacancies can be confusing and may serve to limit the ability of residents of a legislative district to elect an individual of their choosing to the Legislative Assembly;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Management study the filling of vacancies in the Legislative Assembly; 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-third Legislative Assembly.

Filed April 6, 2011

## CHAPTER 553

### HOUSE CONCURRENT RESOLUTION NO. 3045

(Representative Mock)  
(Senator Grindberg)

A concurrent resolution directing the Legislative Management to study the feasibility and desirability of requiring private or public employers or both to use the federal E-Verify program for new hires.

**WHEREAS**, the United States Department of Homeland Security, in partnership with the Social Security Administration, administers the E-Verify program; and

**WHEREAS**, the E-Verify program was created in 1996 as a voluntary Internet-based pilot program to help employers verify the work authorization of new hires and was expanded in 2003 to cover employers in all 50 states; and

**WHEREAS**, the United States Citizenship and Immigration Services reports that as of December 11, 2010, more than 238,000 employers have registered with the program, with 16 million inquiries in fiscal year 2010; and

**WHEREAS**, the United States Citizenship and Immigration Services continues to improve the accuracy of the E-Verify program to decrease the incidence of identity theft and employer fraud; and

**WHEREAS**, 14 states require the use of E-Verify for public or private employment or both;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Management study the feasibility and desirability of requiring private or public employers or both to use the federal E-Verify program for new hires; 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-third Legislative Assembly.

Filed April 6, 2011

## CHAPTER 554

### HOUSE CONCURRENT RESOLUTION NO. 3048

(Representatives Thoreson, Boehning, Hatlestad, Koppelman, Schatz)

A concurrent resolution urging Congress to call a convention for the sole purpose of proposing an amendment to the Constitution of the United States to avoid a "runaway convention".

**WHEREAS**, experience has shown that the safeguards in the United States Constitution, as currently interpreted, may not be sufficiently clear to limit a Constitutional Convention to the specific subject for which that convention was called and thereby avoid a "runaway convention" where other matters may be considered; and

**WHEREAS**, James Madison, who is known as the "Father of the Constitution", believed that Article V of the Constitution gave and should give this protection; and

**WHEREAS**, those who framed and adopted the Constitution included a provision by which state legislatures may require Congress to call a convention for proposing amendments as a way to amend the United States Constitution; and

**WHEREAS**, the North Dakota Legislative Assembly accordingly makes application to Congress for the calling of a convention for proposing an amendment to the Constitution imposing certain rules of fiscal discipline, providing for legislative transparency, and preventing unfunded mandates by the federal government;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

**BE IT FURTHER RESOLVED**, that the North Dakota Legislative Assembly makes the following application:

Section 1. The North Dakota legislative assembly makes an application to the Congress of the United States pursuant to Article V of the Constitution of the United States to call an Article V Amendment Convention for the sole purpose of voting to propose or voting not to propose the following specific amendment to the Constitution of the United States:

"Article \_\_\_\_\_. The Congress, on Application of the Legislatures of two-thirds of the several States, which all contain an identical Amendment, shall call a Convention solely to decide whether to propose that specific Amendment to the States, which if proposed shall be valid to all intents and purposes as part of the Constitution when ratified pursuant to Article V."

Section 2. For the purpose of determining whether the required two-thirds of the legislatures of the several states have applied for a convention, this application may be counted and considered valid only in conjunction with qualifying applications of other states that contain the identical text of the specific amendment contained in this

application and whose application requires that the sole purpose of the convention is to decide whether to propose, or not to propose this specific amendment.

Section 3. This concurrent resolution is revoked and withdrawn, nullified, and superseded to the same effect as if it had never been passed, and retroactive to the date of passage, if it is used to conduct a convention that votes to propose any amendment other than the specific text of the amendment contained in Section 1.

Section 4. Each delegate selected to represent North Dakota at a convention that Congress calls under this resolution shall take an oath, enforceable under this state's law, to abide by and act according to the limits imposed by this resolution on the purpose of the convention.

Section 5. Any delegate selected to represent North Dakota at a convention that Congress calls under this resolution does not have authority to consider or approve any other amendment but the one contained in this application. Any vote taken in violation of this limitation is null and void, and any delegate who so votes does not have any authority to represent this state on any matter at the convention.

Section 6. This application is valid if two-thirds of the states make a qualifying application within seven years of its referral for ratification to the states by Congress under the provisions of Article V.

Section 7. This application is null and void if Congress, within 90 days of receipt of qualifying applications from two-thirds of the states, proposes and refers the ratification by the several states under the procedures outlined in Article V of the Constitution, the same exact text of the amendment contained in this application.

Section 8. That the secretary of state forward copies of this application within 30 days of its passage to the Speaker of the United States House of Representatives, the Clerk of the United States House of Representatives, the President of the United States Senate, the Secretary of the United States Senate, every member of the North Dakota Congressional Delegation, and the presiding officers of each house of the legislatures of the several states.

Filed April 14, 2011

# HOUSE MEMORIAL RESOLUTION

## CHAPTER 575

### 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:

Clare H. Aubol, who served in the 48<sup>th</sup> Legislative Assembly, from District 4, died March 30, 2009;

Florenz Bjornson, who served in the 46<sup>th</sup> Legislative Assembly, from District 13, died January 19, 2011;

A. G. "Art" Bunker, who served in the 40<sup>th</sup> through the 44<sup>th</sup> Legislative Assemblies, from District 21, died October 31, 2009;

Pat Galvin, who served in the 54<sup>th</sup> through the 59<sup>th</sup> Legislative Assemblies, from District 33, died April 25, 2010;

Charles Herman, who served in the 35<sup>th</sup> Legislative Assembly, from District 37, and in the 42<sup>nd</sup> and 43<sup>rd</sup> Legislative Assemblies, from District 21, died June 12, 2010;

Kenneth Knudson, who served in the 40<sup>th</sup> through the 50<sup>th</sup> Legislative Assemblies, from District 38, died December 12, 2009;

Arthur A. Link, who served in the 30<sup>th</sup> through the 39<sup>th</sup> Legislative Assemblies, from District 41, and in the 40<sup>th</sup> and 41<sup>st</sup> Legislative Assemblies, from District 36, died June 1, 2010;

Arthur Melby, who served in the 46<sup>th</sup> through the 51<sup>st</sup> Legislative Assemblies, from District 14, died December 3, 2010;

Walter A. Meyer, who served in the 44<sup>th</sup> through the 47<sup>th</sup> Legislative Assemblies, from District 35, and in the 48<sup>th</sup> Legislative Assembly, from District 53, died October 6, 2010;

Eldor Miller, who served in the 42<sup>nd</sup> Legislative Assembly, from District 33, died November 21, 2010;

Doug Nordby, who served in the 45<sup>th</sup> Legislative Assembly, from District 39, died February 6, 2010;

Alice Olson-Byron, who served in the 43<sup>rd</sup> through the 52<sup>nd</sup> Legislative Assemblies, from District 11, and in the 53<sup>rd</sup> through the 55<sup>th</sup> Legislative Assemblies, from District 10, died February 21, 2010;

Vincent C. Olson, who served in the 49<sup>th</sup> through the 51<sup>st</sup> Legislative Assemblies, from District 24, died May 31, 2010;

Art Raymond, who served in the 42<sup>nd</sup> through the 44<sup>th</sup> Legislative Assemblies, from District 18, died April 1, 2009;

Verdine D. Rice, who served in the 47<sup>th</sup> through the 50<sup>th</sup> Legislative Assemblies, from District 1, died March 30, 2009;

August Ritter, who served in the 52<sup>nd</sup> Legislative Assembly, from District 47, died January 17, 2008;

Emil E. Schaffer, who served in the 38<sup>th</sup> and 39<sup>th</sup> Legislative Assemblies, from District 36, and in the 40<sup>th</sup> and 41<sup>st</sup> Legislative Assemblies, from District 30, died November 5, 2010;

Michael Unhjem, who served in the 44<sup>th</sup> Legislative Assembly, from District 29, and in the 45<sup>th</sup> through the 49<sup>th</sup> Legislative Assemblies, from District 48, died September 13, 2010;

Adella J. Williams, who served in the 48<sup>th</sup> through the 51<sup>st</sup> Legislative Assemblies, from District 27, died November 1, 2010;

Dean Winkjer, who served in the 43<sup>rd</sup> through the 46<sup>th</sup> Legislative Assemblies, from District 1, died April 25, 2009;

**WHEREAS**, we now pause to mourn the passing of our former House colleagues and to honor their memories; and

**WHEREAS**, these legislators rendered outstanding service to the people of the state by their contributions to public service;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA:**

That we express our sorrow on their passing and our appreciation, on behalf of the people of North Dakota, of the loyal and devoted service of our former colleagues; and

**BE IT FURTHER RESOLVED**, that for the perpetuation of their memory this token of respect and sympathy by their successors in trust be printed in the Journal of the House of Representatives and that the Secretary of State present enrolled copies of this resolution to the surviving families of these deceased representatives.

Filed March 23, 2011



# SENATE CONCURRENT RESOLUTIONS

## CHAPTER 555

### SENATE CONCURRENT RESOLUTION NO. 4001

(Legislative Management)  
(Commission on Alternatives to Incarceration)

A concurrent resolution directing the Legislative Management to study the imposition of fees by courts at sentencing and other fees that are imposed upon offenders.

**WHEREAS**, in 2007 the Legislative Assembly created a fifty dollar court supervision fee to be imposed upon an offender sentenced to perform community service; and

**WHEREAS**, after a study during the 2007-08 interim and a recommendation by the Commission on Alternatives to Incarceration to eliminate the court supervision fee, in 2009 the Legislative Assembly reduced the fee to twenty-five dollars; and

**WHEREAS**, during the 2009-10 interim, the Commission on Alternatives to Incarceration was informed the court supervision fee frequently either is not imposed as required or is waived because the fee is low on the hierarchy of fees required to be imposed by courts; and

**WHEREAS**, in addition to over 10 fees that courts may impose on offenders, offenders may be subject to other fees for participation in court-ordered programs; and

**WHEREAS**, a study of all fees imposed upon offenders may address the effectiveness of the fees, determine the appropriate hierarchy for collection purposes, and determine whether the imposition of the fees is successful in addressing the public purposes for which the fees are imposed;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Management study the imposition of fees by courts at sentencing and other fees that are imposed upon offenders; 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-third Legislative Assembly.

Filed April 15, 2011

## CHAPTER 556

### SENATE CONCURRENT RESOLUTION NO. 4002

(Legislative Management)  
(Natural Resources Committee)

A concurrent resolution urging Congress to provide a legal process to return to the riparian landowner land controlled by the Army Corps of Engineers which is not necessary for authorized purposes and if the federal government is unable or unwilling to convey the land back to nontribal and tribal riparian landowners, then Congress shall convey the land back to the state of North Dakota.

**WHEREAS**, the economy and well-being of the residents of North Dakota are dependent upon agriculture; and

**WHEREAS**, the United States, through the Army Corps of Engineers, has acquired certain lands around the Missouri River water system, including Lake Oahe and Lake Sakakawea; and

**WHEREAS**, the Army Corps of Engineers has failed to control weeds and manage this land properly; and

**WHEREAS**, the failure to control weeds on land managed by the Army Corps of Engineers is a public nuisance and jeopardizes the public health, safety, and general welfare of the residents of North Dakota; and

**WHEREAS**, in South Dakota, certain land that is not necessary for flood control by the Army Corps of Engineers has been returned to the state and is managed by the state;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixty-second Legislative Assembly urges the Congress of the United States to provide a legal process to return to the riparian landowner land controlled by the Army Corps of Engineers which is not necessary for authorized purposes and if the federal government is unable or unwilling to convey the land back to nontribal and tribal riparian landowners, then Congress shall convey the land back to the state of North Dakota; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the Commanding General of the Army Corps of Engineers and each member of the North Dakota Congressional Delegation.

Filed April 22, 2011

## CHAPTER 557

### SENATE CONCURRENT RESOLUTION NO. 4003

(Legislative Management)  
(Workforce Committee)

A concurrent resolution supporting the Northern Tier Network Technology Initiative, its private enterprise partners, and the related activities of the Legislative Management's Information Technology Committee.

**WHEREAS**, the Northern Tier Network Technology Initiative is the implementation of an information technology network for the purpose of supporting the research and education missions of the North Dakota University System from Seattle, Washington, to Chicago, Illinois, and from Winnipeg, Manitoba, to Omaha, Nebraska, with North Dakota's segments bordering Montana to the west, Minnesota to the east, the Canadian border to the north, and South Dakota to the south; and

**WHEREAS**, in 2007 the Legislative Assembly appropriated funds to the North Dakota University System to support the Northern Tier Network Technology Initiative; and

**WHEREAS**, during the 2007-08 and 2009-10 interims the Legislative Management's Information Technology Committee has received status reports on the implementation of North Dakota's portion of the Northern Tier Network; and

**WHEREAS**, North Dakota telecommunication companies have played and will continue to play an important role in supporting the Northern Tier Network Technology Initiative;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixty-second Legislative Assembly supports the Northern Tier Network Technology Initiative, its private enterprise partners, and the related activities of the Legislative Management's interim Information Technology Committee; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the members of the Northern Tier Network - North Dakota and the chairman of the Legislative Management's Information Technology Committee.

Filed April 15, 2011

## CHAPTER 558

### SENATE CONCURRENT RESOLUTION NO. 4005

(Senator J. Lee)  
(Representative N. Johnson)

A concurrent resolution directing the Legislative Management to study the impact of the Patient Protection and Affordable Care Act on the Comprehensive Health Association of North Dakota and the statutes governing the Comprehensive Health Association of North Dakota.

**WHEREAS**, the enactment of the Patient Protection and Affordable Care Act makes significant changes to the health insurance industry and includes a provision guaranteeing health insurance coverage for all North Dakotans beginning in 2014; and

**WHEREAS**, the Comprehensive Health Association of North Dakota was established by the Legislative Assembly as the state's high-risk pool to provide an important safety net for those who have been denied insurance coverage in the individual market, to provide coverage for individuals who are disabled or age 65 or over, and to provide other special programs; and

**WHEREAS**, provisions of the Patient Protection and Affordable Care Act do not directly apply to state high-risk pools like the Comprehensive Health Association of North Dakota and the demand for coverage under the Comprehensive Health Association of North Dakota may be significantly impacted with the implementation of the Patient Protection and Affordable Care Act;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Management study the impact of the Patient Protection and Affordable Care Act on the Comprehensive Health Association of North Dakota and the statutes governing the Comprehensive Health Association of 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-third Legislative Assembly.

Filed April 15, 2011

## CHAPTER 559

### SENATE CONCURRENT RESOLUTION NO. 4007

(Senators Olafson, Hogue)  
(Representative Thoreson)

A concurrent resolution providing for the application for an amendments convention to the Constitution of the United States to be called for the purpose of proposing an amendment that provides that an increase in the federal debt requires approval from a majority of the legislatures of the separate states.

**WHEREAS**, Article V of the Constitution of the United States provides authority for a convention to be called by the Congress of the United States for the purpose of proposing amendments to the Constitution of the United States upon application of two-thirds of the legislatures of the several states--an amendments convention; and

**WHEREAS**, the North Dakota Legislative Assembly favors the proposal and ratification of an amendment to the Constitution of the United States that provides that an increase in the federal debt requires approval from a majority of the legislatures of the separate states;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixty-second Legislative Assembly of the state of North Dakota respectfully applies for an amendments convention to the Constitution of the United States to be called for the purpose of proposing an amendment that provides that an increase in the federal debt requires approval from a majority of the legislatures of the separate states; and

**BE IT FURTHER RESOLVED**, that the amendments convention contemplated by this application must be focused entirely upon and exclusively limited to the subject matter of proposing for ratification an amendment to the Constitution of the United States providing that an increase in the federal debt requires approval from a majority of the legislatures of the separate states; and

**BE IT FURTHER RESOLVED**, that this application constitutes a continuing application in accordance with Article V of the Constitution of the United States until at least two-thirds of the legislatures of the several states have made application for an equivalently limited amendments convention; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the President of the United States Senate, to the Speaker of the United States House of Representatives, to each member of the North Dakota Congressional Delegation, and to the presiding officers of each house of the several state legislatures, requesting their cooperation in applying for the amendments convention limited to the subject matter contemplated by this application.

Filed April 11, 2011

## CHAPTER 560

### SENATE CONCURRENT RESOLUTION NO. 4008

(Senators Klein, Miller, Dotzenrod)  
(Representatives Brandenburg, D. Johnson, Mueller)

A concurrent resolution urging the United States Environmental Protection Agency to request an additional 12-month stay of mandate for implementation of the Sixth Circuit Court of Appeals ruling in the matter of *National Cotton Council of America et al., v. United States Environmental Protection Agency*.

**WHEREAS**, the Clean Water Act regulates the discharge of pollutants into the nation's waters by, among other things, requiring entities that emit pollutants obtain and comply with a National Pollutant Discharge Elimination System permit; and

**WHEREAS**, the Environmental Protection Agency established a final rule in November 2006 that concluded that pesticides applied in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act are exempt from Clean Water Act National Pollutant Discharge Elimination System permitting requirements; and

**WHEREAS**, the Sixth Circuit Court of Appeals ruled in the matter of *National Cotton Council of America et al., v. United States Environmental Protection Agency* that pesticides could be considered to be pollutants under the Clean Water Act when applied on, in, or near water; and

**WHEREAS**, the court ordered the Environmental Protection Agency to vacate its 2006 final rule; and

**WHEREAS**, the Environmental Protection Agency previously obtained a two-year stay of mandate to extend the deadline for vacating its 2006 final rule to April 9, 2011; and

**WHEREAS**, 45 states with delegated National Pollutant Discharge Elimination System permitting authority will need to develop and implement National Pollutant Discharge Elimination System permits for pesticide users by April 9, 2011; and

**WHEREAS**, most states have not yet had their National Pollutant Discharge Elimination System general permit documents approved by the Environmental Protection Agency and many pesticide users are still unaware or unclear whether they will need to obtain a National Pollutant Discharge Elimination System permit to comply with the Clean Water Act on or after April 9, 2011;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixty-second Legislative Assembly urges the United States Environmental Protection Agency submit an additional 12-month stay of mandate

request to the Sixth Circuit Court of Appeals to extend the deadline for vacating the agency's final rule to April 9, 2012; and

**BE IT FURTHER RESOLVED**, that the Sixty-second Legislative Assembly supports a federal legislative solution that exempts pesticides from the definition of pollutant under the Clean Water Act provided those pesticides are used in a manner that complies with the Federal Insecticide, Fungicide, and Rodenticide Act.

Filed April 15, 2011

## CHAPTER 561

### SENATE CONCURRENT RESOLUTION NO. 4009

(Senators J. Lee, Berry, O'Connell)  
(Representatives Heller, Hogan, Karls)

A concurrent resolution declaring February 2011 as "American Heart Month" and Friday, February 4, 2011, "National Wear Red Day" in North Dakota and encouraging all citizens to wear red to raise awareness of cardiovascular disease.

**WHEREAS**, cardiovascular disease is the nation's leading cause of death and costliest disease with direct and indirect costs estimated to be \$228 billion; and

**WHEREAS**, nearly 2,200 Americans die of cardiovascular disease each day, an average of one death every 39 seconds; and

**WHEREAS**, nearly one in three deaths due to cardiovascular disease occur before the age of 75 years; and

**WHEREAS**, efforts of the American Heart Association encourage citizens to help save lives by calling 9-1-1 if symptoms occur, become trained in cardiopulmonary resuscitation, and encourage comprehensive automated external defibrillator programs in their communities; and

**WHEREAS**, the research is clear that there are preventive strategies, as well as community-based strategies, that can increase survival rates from cardiovascular disease; and

**WHEREAS**, only one statewide program exists for reaching North Dakota residents on heart disease, their risk, and helping individuals to improve personal and family health--Go Red North Dakota; and

**WHEREAS**, the Go Red North Dakota program is seen as a nationwide innovator and a source of tools for other states and tribal programs;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixty-second Legislative Assembly in recognition of the importance of the ongoing fight against heart disease, does hereby proclaim February 2011 to be American Heart Month in North Dakota and urge all citizens to recognize the critical importance of tools and skills that will increase survival rates from cardiac arrest. By incorporating these tools into aggressive programs, thousands of lives each year can be saved; and

**BE IT FURTHER RESOLVED**, that Friday, February 4, 2011, be declared "National Wear Red Day" in North Dakota and urge all citizens to show their support in the fight against heart disease by commemorating this day by the wearing of the color red.

Filed February 1, 2011



## CHAPTER 562

### SENATE CONCURRENT RESOLUTION NO. 4010

(Senators Krebsbach, Heckaman, J. Lee, Warner)  
(Representatives N. Johnson, Maragos)

A concurrent resolution directing the Legislative Management to study the adequacy of governmental services, including judicial services, to respond to issues relating to an aging population, including veterans, and to study the efficacy of statutes governing public administrator services and methods for the timely and effective delivery of guardianship and public administrator responsibilities and services.

**WHEREAS**, during the 2003-04 interim, a study of guardianship services by the interim Criminal Justice Committee, with the assistance of the North Dakota Guardianship Task Force, identified important deficiencies in the funding and effective delivery of guardianship services and during subsequent years new issues may have arisen; and

**WHEREAS**, legislation recommended by the interim Criminal Justice Committee to address the deficiencies was not enacted and methods for the effective delivery of guardianship services generally, and public guardianship services in particular, remain uncertain, inconsistent, and lacking in sufficient funding and the unsupervised use of representative payees and powers of attorney agreements have raised important new concerns; and

**WHEREAS**, state law governing public administrators, a critically important form of public guardianship, is vague and incomplete with respect to services to be provided, levels of supervision, general accountability, the responsibility to adequately compensate those who are appointed to serve as public administrators, and the role of the courts in responding to unique issues associated with an aging population; and

**WHEREAS**, there is also a need to study issues of public administrator services and methods for the timely and effective delivery of guardianship services as they relate to the aging veteran population in this state; and

**WHEREAS**, other states have considered or implemented different models for the provision of public guardianship services to ensure adequate services, oversight, and the availability of qualified individuals to provide guardianship services;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Management study the adequacy of governmental services, including judicial services, to respond to issues relating to an aging population, including veterans, and to study the efficacy of statutes governing public administrator services and methods for the timely and effective delivery of guardianship and public administrator responsibilities and services; 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-third Legislative Assembly.

Filed April 15, 2011

## CHAPTER 563

### SENATE CONCURRENT RESOLUTION NO. 4012

(Senators Warner, J. Lee)  
(Representatives Conklin, N. Johnson)

A concurrent resolution directing the Legislative Management to study the feasibility and desirability of placing the entire Fort Berthold Reservation in a single public health unit.

**WHEREAS**, public health services are essential in promoting a healthy workforce to rapidly growing communities in Indian country; and

**WHEREAS**, the Indian Health Service faces a possible decline in funding; and

**WHEREAS**, the Fort Berthold Reservation encompasses portions of six counties and is served by at least three public health units which results in funding problems;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Management study the feasibility and desirability of placing the entire Fort Berthold Reservation in a single public health unit; 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-third Legislative Assembly.

Filed April 22, 2011

## CHAPTER 564

### SENATE CONCURRENT RESOLUTION NO. 4013

(Senators Stenehjem, Christmann, Sitte)  
(Representatives Carlson, Delzer, Pollert)

A concurrent resolution urging Congress to adopt a federal balanced budget amendment.

**WHEREAS**, a balanced budget amendment to the Constitution of the United States is necessary to restore fiscal discipline to our republic; and

**WHEREAS**, a balanced budget amendment should require the President to submit to Congress a proposed budget before each fiscal year in which total federal spending does not exceed total revenue; and

**WHEREAS**, that the balanced budget amendment should include a requirement that a supermajority of both houses of Congress be necessary to increase taxes; and

**WHEREAS**, the federal budget should be balanced by reductions in or freezing current spending before any increase in taxes; and

**WHEREAS**, a balanced budget amendment should include a limitation on total federal spending;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixty-second Legislative Assembly urges Congress to adopt a federal balanced budget amendment; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the presiding officer of each house of Congress, the President, and to each member of the North Dakota Congressional Delegation.

Filed April 15, 2011

## CHAPTER 565

### SENATE CONCURRENT RESOLUTION NO. 4014

(Senator Mathern)  
(Representative Maragos)

A concurrent resolution urging the Government of Turkey to grant the Ecumenical Patriarch appropriate international recognition, ecclesiastical succession, and the right to train clergy of all nationalities and to respect the property rights and human rights of the Ecumenical Patriarchate; and for other purposes.

**WHEREAS**, the Ecumenical Patriarchate, located in Istanbul, Turkey, is the Sacred See that presides in a spirit of cooperation over a communion of self-governing churches of the Orthodox Christian world; and

**WHEREAS**, the See is led by Ecumenical Patriarch Bartholomew, who is the 269<sup>th</sup> in direct succession to the Apostle Andrew and holds titular primacy as primus inter pares, meaning "first among equals," in the community of Orthodox worldwide; and

**WHEREAS**, in 1994, Ecumenical Patriarch Bartholomew, along with leaders of the Appeal of Conscience Foundation, cosponsored the Conference on Peace and Tolerance, which brought together Christian, Jewish, and Muslim religious leaders for an interfaith dialogue to help end the Balkan conflict and the ethnic conflict in the Caucasus region; and

**WHEREAS**, in 1997, the Congress of the United States awarded Ecumenical Patriarch Bartholomew with the Congressional Gold Medal; and

**WHEREAS**, following the terrorist attacks on our nation on September 11, 2001, Ecumenical Patriarch Bartholomew gathered a group of international religious leaders to produce the first joint statement with Muslim leaders that condemned the September 11, 2001, attacks as "antireligious"; and

**WHEREAS**, in October 2005, the Ecumenical Patriarch, along with Christian, Jewish, and Muslim leaders, cosponsored the Conference on Peace and Tolerance II to further promote peace and stability in southeastern Europe and Central Asia via religious leaders' interfaith dialogue, understanding, and action; and

**WHEREAS**, the Orthodox Christian Church, in existence for nearly 2,000 years, numbers approximately 300,000,000 members worldwide with more than 2,000,000 members in the United States; and

**WHEREAS**, since 1453, the continuing presence of the Ecumenical Patriarchate in Turkey has been a living testament to the religious coexistence of Christians and Muslims; and

**WHEREAS**, this religious coexistence is in jeopardy because the Ecumenical Patriarchate is considered a minority religion by the Turkish government; and

**WHEREAS**, the Government of Turkey has limited the candidates available to hold the office of Ecumenical Patriarch to Turkish nationals only, and from the millions of Orthodox Christians living in Turkey at the turn of the 20<sup>th</sup> century and due to the continued policies during this period by the Turkish government, there remain fewer than 3,000 of the Ecumenical Patriarch's flock left in Turkey today; and

**WHEREAS**, the Government of Turkey closed the Theological School on the island of Halki in 1971 and has refused to allow it to reopen, thus impeding training for Orthodox Christian clergy; and

**WHEREAS**, the Turkish government has confiscated nearly 94 percent of the Ecumenical Patriarchate's properties; and

**WHEREAS**, the European Union, a group of nations with a common goal of promoting peace and the well-being of its peoples, began accession negotiations with Turkey on October 3, 2005; and

**WHEREAS**, the European Union defined membership criteria for accession at the Copenhagen European Council in 1993, obligating candidate countries to achieve certain levels of reform, including stability of institutions guaranteeing democracy, adherence to the rule of law, and respect for and protection of minorities and human rights; and

**WHEREAS**, the Turkish government's current treatment of the Ecumenical Patriarchate is inconsistent with the membership conditions and goals of the European Union; and

**WHEREAS**, Orthodox Christians in this state and throughout the United States stand to lose their spiritual leader because of the continued actions of the Turkish government;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the North Dakota Legislative Assembly urges the Government of Turkey to uphold and safeguard religious and human rights; cease its discrimination of the Ecumenical Patriarchate; grant the Ecumenical Patriarch appropriate international recognition, ecclesiastic succession, and the right to train clergy of all nationalities; and respect the property rights and human rights of the Ecumenical Patriarchate; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the President of the United States, the United States Ambassador to the Republic of Turkey, the Ambassador of the Republic of Turkey to the United States, and the members of the North Dakota Congressional Delegation.

Filed April 22, 2011

## CHAPTER 566

### SENATE CONCURRENT RESOLUTION NO. 4016

(Senators Nelson, Schneider, Triplett)  
(Representatives Conklin, Holman, D. Johnson)

A concurrent resolution expressing support for the public awareness of multiple sclerosis; declaring the week of March 14-20, 2011, "MS Awareness Week"; and urging the Congress of the United States to join in the movement in creating a world free of multiple sclerosis.

**WHEREAS**, multiple sclerosis is a chronic and disabling disease of the central nervous system in which the progression, severity, and specific symptoms cannot be foreseen; and

**WHEREAS**, every hour of every day someone new is diagnosed with multiple sclerosis--a disease that can erode an individual's abilities and hopes, halt a career, and unravel the fabric of families; and

**WHEREAS**, last year in North Dakota more than \$700,000 was raised to find a cure for multiple sclerosis and develop effective treatments for the disease, as well as to provide a wide range of client programs to improve the lives of the 1,500 individuals living with multiple sclerosis in our state; and

**WHEREAS**, this investment is paying off in significant advances in treating multiple sclerosis, such as new medications that may reduce or delay future disability for individuals with multiple sclerosis; and

**WHEREAS**, although research advances have brought us closer to finding the cure, much remains to be done and services must continue to be provided to those who live with the disease; and

**WHEREAS**, there are public and private agencies available to serve the constantly changing needs of North Dakotans with multiple sclerosis and their families by extending essential service to all who need them;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixty-second Legislative Assembly in recognition of the importance of public awareness of multiple sclerosis, proclaims the week of March 14-20, 2011, "MS Awareness Week" in North Dakota and urges the Congress of the United States to join in the movement in creating a world free of multiple sclerosis; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the Majority Leader of the United States Senate, the Speaker of the United States House of Representatives, each member of the North Dakota Congressional Delegation, the North Dakota office of the North Central States Chapter of the National Multiple Sclerosis Society, and the National Multiple Sclerosis Society.

Filed April 22, 2011

## CHAPTER 567

### SENATE CONCURRENT RESOLUTION NO. 4017

(Senators Nelson, Murphy, J. Lee)  
(Representative Conklin)

A concurrent resolution directing the Legislative Management to study the feasibility and desirability of allowing school officials, including officials of higher education institutions, access to the otherwise confidential files and records of the juvenile court.

**WHEREAS**, the North Dakota Century Code provides that, with certain limited exceptions, the files and records of the juvenile court are closed to the public; and

**WHEREAS**, school officials are not within the list of limited exceptions; and

**WHEREAS**, the North Dakota Century Code provides that the files and records of the juvenile court are open to inspection with written leave of a juvenile judge or judicial referee by the principal of any public or nonpublic school that is a member of the North Dakota High School Activities Association, or the superintendent of any school district that has one or more schools involved in the association, but only to the extent necessary to enforce the rules and regulations of the North Dakota High School Activities Association; and

**WHEREAS**, school officials are not permitted to inspect the files or records for other purposes; and

**WHEREAS**, officials of higher education institutions also have restricted access to juvenile court records of incoming and enrolled students; and

**WHEREAS**, receiving additional information about incoming and enrolled students who are juvenile offenders or who are students with juvenile court records would assist school officials in protecting the welfare and safety of all students and staff, in providing appropriate treatment and rehabilitation to the juvenile offenders or to students with juvenile court records, and in providing appropriate levels of support and supervision to the juvenile offenders or the students with juvenile court records;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Management study the feasibility and desirability of allowing school officials, including officials of higher education institutions, access to the otherwise confidential files and records of the juvenile court; 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-third Legislative Assembly.

Filed April 22, 2011



## CHAPTER 568

### SENATE CONCURRENT RESOLUTION NO. 4018

(Senators Wanzek, Flakoll, Schaible)  
(Representatives Belter, Headland, D. Johnson)

A concurrent resolution urging the Secretary of the United States Department of Agriculture to rely on sound scientific research to support regulatory decisionmaking with respect to the deregulation of alfalfa and all other similar circumstances.

**WHEREAS**, in 2010 the United States Supreme Court reversed a ban on genetically engineered alfalfa; and

**WHEREAS**, the United States Department of Agriculture recently released the final environmental impact statement for genetically engineered alfalfa; and

**WHEREAS**, the United States Department of Agriculture is considering the deregulation of genetically engineered alfalfa but not without geographic restrictions and isolation distances, in order to foster coexistence with individuals who produce nongenetically engineered seeds; and

**WHEREAS**, deregulation with conditions subverts a thorough scientifically based review process through the imposition of nonscientific based regulatory decisionmaking; and

**WHEREAS**, growers who produce high-value crops under identity-preserved systems have a long history of cooperating with neighboring growers to isolate crops from adjacent fields; and

**WHEREAS**, all growers continue to work closely with the seed industry to meet their respective stewardship obligations through contractual arrangements and other mechanisms; and

**WHEREAS**, matters of coexistence and stewardship are most effectively and efficiently addressed through producer relationships, rather than through federal regulatory impositions;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixty-second Legislative Assembly urges the Secretary of the United States Department of Agriculture to rely on sound scientific research to support regulatory decisionmaking with respect to the deregulation of alfalfa and all other similar circumstances; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the Secretary of the United States Department of Agriculture and to each member of the North Dakota Congressional Delegation.

Filed April 15, 2011

## CHAPTER 569

### SENATE CONCURRENT RESOLUTION NO. 4019

(Senators Wanzek, Luick, Uglem)  
(Representatives Belter, Headland, D. Johnson)

A concurrent resolution recognizing the benefits of subsurface drain tile projects and urging the State Water Commission, State Engineer, Natural Resources Conservation Service, and water resource districts to recognize the beneficial attributes of and to promote drain tile projects in this state.

**WHEREAS**, drain tile projects have proven beneficial to agricultural production by increasing agricultural productivity and property values; and

**WHEREAS**, drain tile projects alleviate downstream flooding by providing additional storage of water; and

**WHEREAS**, drain tile projects improve the soil by reducing salinity of the soil;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixty-second Legislative Assembly recognizes the benefits of subsurface drain tile projects and urges the State Water Commission, State Engineer, Natural Resources Conservation Service, and water resource districts to recognize the beneficial attributes of and to promote drain tile projects in this state; and

**BE IT FURTHER RESOLVED**, that the State Water Commission, State Engineer, Natural Resources Conservation Service, and water resource district boards pursue the investigation and approval of drain tile projects; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the Governor; Agriculture Commissioner; each member of the State Water Commission; State Engineer; state executive director, Farm Services Agency, United States Department of Agriculture; and state conservationist, Natural Resources Conservation Service, United States Department of Agriculture.

Filed April 15, 2011

## CHAPTER 570

### SENATE CONCURRENT RESOLUTION NO. 4020

(Senator Robinson)

A concurrent resolution directing the Legislative Management to study the causes of increases in Department of Human Services caseloads and program utilization and the impact of federal health care reform.

**WHEREAS**, the 2009 Legislative Assembly provided a total general fund appropriation for the Department of Human Services of \$652.2 million, which is \$58.3 million, or 9.8 percent, more than the legislative appropriation for the 2007-09 biennium; and

**WHEREAS**, the 2011-13 executive budget provides a total general fund appropriation for the Department of Human Services of \$927.4 million, which is \$275.2 million, or 42.2 percent, more than the legislative appropriation for the 2009-11 biennium; and

**WHEREAS**, the Department of Human Services is experiencing increases in caseloads and program utilization, including an increase in the number of Medicaid eligibles from 53,644 in December 2008 to 63,473 in November 2010; and

**WHEREAS**, the state of North Dakota is experiencing low unemployment, increases in personal income, and a strong economy; and

**WHEREAS**, the federal Patient Protection and Affordable Care Act will increase the future expenditures of the Department of Human Services beyond the control of the state of North Dakota;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Management study the causes of the increases in the Department of Human Services caseloads and program utilization and the impact of federal health care reform; 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-third Legislative Assembly.

Filed April 22, 2011

## CHAPTER 571

### SENATE CONCURRENT RESOLUTION NO. 4021

(Senators Marcellais, Heckaman, Triplett)  
(Representatives M. Nelson, Onstad)

A concurrent resolution directing the Legislative Management to study the feasibility and desirability of developing a strategic partnership between the State Tourism Division and corresponding tourism departments or alliances of tourism departments of the Indian tribes within North Dakota promoting tourism in North Dakota.

**WHEREAS**, the State Tourism Division exists as a planning and coordinating agency for tourism-related programs of the state and the state's tourism partners; and

**WHEREAS**, in early 2011, the federally recognized Indian tribes within North Dakota organized an intertribal tourism alliance that seeks cooperation with the State Tourism Division; and

**WHEREAS**, each federally recognized Indian tribe within North Dakota also has a tourism department or equivalent agency or function that seeks to draw visitors to the various attractions and activities that occur within the Indian reservations of the state; and

**WHEREAS**, joint planning and marketing of tourism in North Dakota by the state and the federally recognized Indian tribes within the state could substantially boost tourism in North Dakota by featuring American Indian activities and attractions of interest to both international and out-of-state tourists seeking contacts and experiences with American Indians and seeking to learn about the history of the state; and

**WHEREAS**, an investment of state funds into joint tourism marketing programs between the state and an alliance of tribal tourism departments could lead to increased economic development in rural areas in North Dakota as well as for the Indian tribes themselves;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Management study the feasibility and desirability of developing a strategic partnership between the State Tourism Division and corresponding tourism departments or alliances of tourism departments of the Indian tribes within North Dakota promoting tourism 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-third Legislative Assembly.

Filed April 22, 2011

## CHAPTER 572

### SENATE CONCURRENT RESOLUTION NO. 4022

(Senators Nodland, Wanzek, Wardner)  
(Representatives Headland, Schatz)

A concurrent resolution urging Congress to sell federal land to long-term lessees of the land in this state.

**WHEREAS**, the Bureau of Reclamation owns land surrounding Lake Patterson and the Jamestown Reservoir, and owns other land in this state; and

**WHEREAS**, homes have occupied this land for over a half century without interfering or hindering the intent or operation of the federal projects for which the land was purchased; and

**WHEREAS**, North Dakota residents are discriminated against because other similar property in other states has been transferred to the permitholders, for example, in Montana due to federal legislation;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixty-second Legislative Assembly urges the Congress of the United States to sell federal land to long-term lessees of the land in this state; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the Bureau of Reclamation and each member of the North Dakota Congressional Delegation.

Filed April 15, 2011

## CHAPTER 573

### SENATE CONCURRENT RESOLUTION NO. 4025

(Senators Nething, Stenehjem, Taylor)  
(Representatives Carlson, DeKrey, J. Kelsh)  
(Approved by the Delayed Bills Committee)

A concurrent resolution commending Assistant Attorney General Jonathan Byers for his quick and effective reaction to a serious threat to public safety, disregarding his own personal safety for the benefit of others.

**WHEREAS**, Jonathan Byers has held the position of Assistant Attorney General for nearly 19 years, and is presently the Division Director of the Criminal and Regulatory Division of the Attorney General's office; and

**WHEREAS**, Mr. Byers has a reputation, throughout the state of North Dakota, as the "go to" prosecutor for difficult and complex sexual offense and other criminal cases; and

**WHEREAS**, having concluded a recent week-long felony trial, Mr. Byers was confronted, in open court, by the recently convicted defendant who was brandishing a handgun; and

**WHEREAS**, Mr. Byers, being unarmed himself, but recognizing the seriousness and danger of the situation, did at great risk to his own personal safety, physically and forcefully subdue the defendant before the weapon could be discharged, thus preserving the safety of those present, including the judge, the jury, and the public;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Assembly commends Assistant Attorney General Jonathan Byers for his heroic actions, which exemplify the degree to which a public employee may act in the interests of the public he serves; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to Assistant Attorney General Jonathan Byers and to Attorney General Wayne Stenehjem.

Filed March 7, 2011

## CHAPTER 574

### SENATE CONCURRENT RESOLUTION NO. 4026

(Senator Schneider)  
(Representative Mock)

A concurrent resolution directing the Legislative Management to study the use of specialized companies to manage student financial aid refund operations and the online financial and banking services that the companies are offering to students.

**WHEREAS**, after all tuition and fees have been paid, a student is entitled to use leftover financial aid for books, school supplies, rent, and other expenses associated with the pursuit of higher education; and

**WHEREAS**, in order to meet their obligations with respect to the refunding of excess financial aid to students, many institutions of higher education have turned to companies that specialize in managing refund operations; and

**WHEREAS**, companies that specialize in managing refund operations often offer an array of online financial and banking services to students; and

**WHEREAS**, students often do not realize that financial aid refunds can be sent electronically to any bank account in this country; and

**WHEREAS**, students often do not realize that while all banks or financial service companies charge fees for certain services, not all of them charge the same fees; and

**WHEREAS**, students often do not realize that optional services may result in the assessment of substantial fees;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Management study the extent to which North Dakota institutions of higher education are contracting with companies that specialize in managing refund operations, whether such companies are offering online financial and banking services to North Dakota students, and whether the students are being given full, complete, and readily comprehensible information regarding the array of services being offered, the fees being charged, and other options that are available for the control and management of their financial resources; 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-third Legislative Assembly.

Filed April 22, 2011

# SENATE MEMORIAL RESOLUTION

## CHAPTER 576

### 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:

John D. Decker, who served in the 40<sup>th</sup> and 41<sup>st</sup> Legislative Assemblies, from District 5, died February 26, 2009;

Donald W. Hanson, who served in the 45<sup>th</sup> through the 47<sup>th</sup> Legislative Assemblies, from District 45, died May 13, 2009;

Geraldine "Jerry" Meyer, who served in the 48<sup>th</sup> through the 51<sup>st</sup> Legislative Assemblies, from District 3, died July 22, 2010;

Walter A. Meyer, who served in the 49<sup>th</sup> through the 51<sup>st</sup> Legislative Assemblies, from District 53, died October 6, 2010;

Theron L. Strinden, who served in the 38<sup>th</sup> and 39<sup>th</sup> Legislative Assemblies, from District 38, and in the 41<sup>st</sup> through 46<sup>th</sup> Legislative Assemblies, from District 24, died March 3, 2011;

William J. Thoreson, who served in the 41<sup>st</sup> and 42<sup>nd</sup> Legislative Assemblies, from District 12, died March 3, 2009;

Carrol Torgerson, who served in the 38<sup>th</sup> and 39<sup>th</sup> Legislative Assemblies, from District 16, and in the 40<sup>th</sup> and 41<sup>st</sup> Legislative Assemblies, from District 23, died June 26, 2010;

Jerry Waldera, who served in the 48<sup>th</sup> through the 51<sup>st</sup> Legislative Assemblies, from District 37, died November 26, 2009; 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 23, 2011